

Improving Indigent Defense: Evaluation of the Harris County Public Defender

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This report presents the Justice Center's summary of analyses and lessons learned from the evaluation and technical assistance provided to the Harris County Public Defender during the last two years. We wish to acknowledge the extent to which our work builds upon the efforts of many other dedicated people in a field that is fortunate to have their contributions. In particular, and at the risk of excluding many others who deserve credit, we acknowledge: the tireless and insightful work of Bob Spangenberg in Texas and across the country; the enormous contributions of Professor Norm Lefstein to understanding the challenge of defense workloads; the perennial leadership of the American Bar Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid and Defender Association; the responsiveness and insight of Alex Bunin, Harris County Public Defender; and the guidance and support of Jim Bethke, Executive Director of the Texas Indigent Defense Commission, and its Chair, the Honorable Sharon Keller, Presiding Judge, Texas Court of Criminal Appeals.

TABLE OF CONTENTS

I. Executive Summary	1
II. Background	6
A. The Challenge of Indigent Defense	6
B. The Texas Response	9
C. The Harris County System	11
III. The Harris County Public Defender.	14
A. Creation	14
B. Structure	15
C. Cost	15
IV. Evaluation	19
A. Independence	19
B. Balanced Defense Delivery	19
C. Workload Control	20
D. Parity	24
E. Process	24
F. Quality	25
V. Defense Outcomes	26
A. Methodology	26
B. Defining Case Outcomes	28
C. Mental Health Division	29
D. Felony Trial Division	31
E. Appellate Division	34
F. Juvenile Division	35
G. System Contributions	37
VI. Conclusion	40
Endnotes	41

TABLE OF TABLES

Table 1: Per-Case Indigent Defense Payouts in Urban Counties, FY 2012	12
Table 2: Indigent Cases, Percentage Public Defender and Cost Per Case Comparison	16
Table 3: Comparison of Case Types Assigned to HCPD and Remaining Harris County Case Distribution, Oct. 2011 - July 2013	17
Table 4: HCPD Average Time Spent by Felony Case Type, Oct. 2010 - Nov. 2011	21
Table 5: Number of Cases Disposable Annually by Offense	22
Table 6: Examples of Implementing Case Weights	23
Table 7: Harris County Data Sources	26
Table 8: State Data Sources	26
Table 9: Data for Comparisons by HCPD Division	28
Table 10: Case Outcomes for Mental Health Division, Jan. - June 2011	29
Table 11: Comparison of Misdemeanor Mental Health Client Outcomes by Attorney Type	30
Table 12: Punishment Outcome by Attorney Type for Misdemeanor Mental Health Clients	30
Table 13: Proportion of Clients with a Class A Misdemeanor Conviction by Attorney Type.	31
Table 14: Recidivism Rates for Clients by Attorney Type	31
Table 15: Outcomes for HCPD Felony Cases, Oct. 2011 - Oct. 2012	32
Table 16: Comparison of Felony Client Outcomes by Attorney Type	32
Table 17: Comparison of Felony Client Outcomes by Attorney Type for Tried Cases	33
Table 18: Client Outcome Comparison for Felony Clients Found Guilty	33
Table 19: Reductions for Findings of Guilt and Percentage of Total Cases by Attorney Type	33
Table 20: Combining Reductions and Dismissals by Attorney Type	34
Table 21: Extensions Filed in Appeals by Attorney Type, Feb. 2011 - Aug. 2012	35
Table 22: Case Outcomes for Juvenile Division, Jan. - Dec. 2012	36
Table 23: Client Outcomes for Juvenile Division, Jan. - Dec. 2012	36
Table 24: Juvenile Division Client Dispositions	37

TABLE OF FIGURES

Figure 1: Texas District Courts, January 2012	9
Figure 2: Proportion of Cases Represented by Attorneys Above and Below the NAC Standard	13
Figure 3: Timeline of Public Defender Office Operations	14
Figure 4: HCPD Organizational Structure	15
Figure 5: Proportion of Investigator Time by Outcomes in Felony Cases	24

I. EXECUTIVE SUMMARY

Introduction

This report explores the challenge of providing quality indigent defense services in Harris County (Houston), Texas. For all jurisdictions, that challenge is to create and sustain an effective system that fulfills the jurisdiction's constitutional obligation, allows the fulfillment of each attorney's ethical obligation to each client, and ensures that punishment and rehabilitative resources are appropriately utilized.

The Harris County Public Defender ("HCPD") began operations in early 2011. In 2012, HCPD contracted with the Justice Center for technical assistance and data analysis to assist in implementation and to evaluate the effectiveness of the office. The Justice Center interacted continuously with the office, conducting data analyses and reviewing processes to guide implementation. This report summarizes the collective knowledge generated from that work.

The Justice Center set out to determine whether HCPD adds value to the criminal justice system of the county. The answer is "yes." The public defender adds significant value to the delivery of defense services in Harris County in three key ways: (1) better defense case outcomes than assigned counsel; (2) previously unavailable defense services such as training, mentoring, and advice; and, (3) defense participation in discussion of systemic issues.

A blend between public and private delivery of services is recommended and exists in urban settings across the country. (Harris County was the last major urban jurisdiction in the country to add a public defender.¹) The demonstrated value added by the Harris County Public Defender is important for balance in a system that historically has depended heavily on assigned counsel. With HCPD now fully operational, it handles only 6 percent of the county's indigent defense trial-level cases.

The public defender model depends upon lawyers who justify their taxpayer salaries, but are not so busy that they are unable to competently represent clients. In contrast, the assigned counsel system allows for attorneys, without the accountability built into the public defender model, handling much higher caseloads than those acceptable by non-binding national standards, and allows for much lower per-case costs. Outcome analyses showed lower per-case costs were connected with poorer outcomes. The tension between quality and cost is the key challenge for Harris County as well as other jurisdictions operating primarily with an assigned counsel system.

Summary of Key Findings

The evaluation uses the American Bar Association's (ABA) "Ten Principles of a Public Defense Delivery System" and Texas statutes to frame the basic requirements, then explores case outcomes and systemic contributions that demonstrate the committed and sustained professional presence of the defense function. This approach was used with recognition that the evaluation of indigent defense is an ongoing, national discussion.² For purposes of this summary, case outcome comparisons, measured by data analysis, are featured first.

Defining Positive Defense Outcomes

No Bill: a grand jury finding of no probable cause for a criminal charge brought by law enforcement.

Dismissal: the prosecution on its own motion ceasing pursuit of a criminal charge.

Charge Reduction: a plea bargain resulting in conviction of a less serious offense.

Acquittal: a finding of “not guilty” by a judge or jury.

Reversal: an appellate court’s rejection of a trial court result.

Finding: HCPD delivers better defense outcomes than assigned counsel for the cases studied in this evaluation.

According to the judges in the county and the lawyers in HCPD, Harris County has many capable lawyers who accept court appointments. The statistical evaluation presented here is not directed at judging the work of specific lawyers but instead at examining the aggregate impact of many lawyers—assigned, private, or public defenders—on case outcomes. Moreover, due to limitations in available data and of statistical analysis, which are common in this area, the results have to be interpreted carefully. With the limitations in the data that are discussed in the report, the evaluation showed that public defender attorneys delivered better defense results than assigned counsel attorneys for the cases studied here. This finding is generally consistent with several other recent studies in other jurisdictions.³ A sample of outcome comparisons from this evaluation follows:

- Misdemeanor dismissals were five times more likely for HCPD clients with mental health diagnoses than for a matched group of similar defendants with assigned counsel.
- Felony HCPD counsel achieved a greater proportion of dismissals, deferred sentences, and acquittals, and a smaller proportion of “guilty” outcomes, than assigned counsel. HCPD secured acquittals on all charges at three times the rate of appointed and retained counsel.
- Felony HCPD counsel was far more likely to take their cases to trial than appointed counsel or retained counsel. Once at trial, HCPD clients were more likely to get acquittals for all charges; 22 percent of HCPD clients were found not guilty at trial.
- More investigation time spent by HCPD correlates with positive case outcomes—no bills or dismissals. HCPD spent \$534,174 for 3,950 cases (felony, misdemeanor, and juvenile) in a year, an average of \$135 per case, compared to the assigned counsel system, in which the county spent \$874,638 for 67,530 cases, an average of \$13 per case. More precisely, the average investigative expenditure for a felony assigned counsel case is \$34 and the average for a misdemeanor is 22 cents.
- Appointed counsel reduced charges for 23 percent of clients, which is more than HCPD and hired attorneys, but appointed counsel also achieved the fewest dismissals (11 percent versus HCPD’s 17 percent and retained counsel’s 18 percent). This suggests that HCPD and retained counsel are more likely to achieve dismissal of weak cases, where appointed counsel is more likely to plead them down.

- HCPD appellate counsel had a 5 percent reversal rate (ratio of number of cases reversed to number of cases heard), while the 1st and 14th Courts of Appeals (in which the Appellate Division practices) average a 3 percent reversal rate in criminal cases (which includes cases outside of Harris County).

Finding: Assigned counsel system allows high caseloads.

Without regard to other workload that would make the problem worse, records show that the assigned counsel systems for felonies, misdemeanors, and juvenile cases allow some attorneys to be assigned an excessive number of cases. This finding, however, is qualified by the lack of information about actual workload, or types of cases accepted, for assigned counsel.

- The felony assigned counsel system resulted in 45 percent of the cases (9,302 cases) being assigned in excess of the National Advisory Commission (NAC) “standard” of 150 felonies per year.⁴
- The misdemeanor assigned counsel system resulted in the top 10 percent of attorneys receiving over 452 cases in a year (with an average of 632 and the highest at 952 cases). There were 32 attorneys who received more than 400 cases, 6 of whom received more than 400 in one court, which exceeds the NAC standard of 400 misdemeanors.
- In the juvenile assigned counsel system, one attorney accepted 525 cases in FY 2012. Twelve attorneys had more than the NAC standard of 200 juvenile cases, with an average of 327 cases per attorney.

Finding: HCPD satisfies the ABA's Ten Principles.

HCPD was developed and implemented with thoughtful and lengthy planning, utilizing the full talents of the professional justice system team in Harris County to ensure that the system has the public and private components that it needs. Workload is controlled, and there is sufficient salary parity with the prosecution so the defense should not suffer for legal talent. HCPD has a supportive advisory board and a well-qualified Chief Defender, suitable county office space and county support, qualified employees, and sound policies. The office's distribution of work supports the provision of counsel commensurate with experience and training. HCPD has adopted the Texas State Bar's Performance Guidelines for Non-Capital Criminal Defense Representation as part of its employee performance standards and basis for evaluation, which is an important indication of quality control.⁵

Finding: HCPD provides systemic value-added services.

The Texas Indigent Defense Commission grant that created HCPD sought a commitment to an office that would be dedicated to raising the level of practice of criminal defense, and to improvements in the justice system more generally. In addition to improving standards with better case outcomes, the public defender's office has been able to provide representation when systemic problems emerge; sponsor a variety of continuing legal education opportunities to lawyers in the system; offer other forms of consultation and assistance to the defense bar; and develop a federal grant-funded mentorship program for selected assigned counsel. This more qualitative perspective on HCPD was supplemented by interviewing many of the judges who refer cases to the office. The interviews yielded positive and even enthusiastic reports.

Summary of Lessons Learned

Lesson: Workload control is key.

HCPD policy, and Harris County court administration practice in support of that policy, provides a satisfactory basis for concluding that workload control is in place. This evaluation provided an opportunity to more finely tune that concept. HCPD has maintained time data on their work and asked the Justice Center to analyze workload in a fashion that provides useful information for the management of HCPD.

For example the analysis showed that the average felony case takes 6.5 hours of attorney time. More importantly for planning purposes, a burglary case takes an average of 4.8 hours and a murder case takes an average of 35.8 hours. An attorney could carry a caseload ranging from 38 cases alleging murder to 278 cases alleging burglary. Based on this information, an analysis of each attorney caseload can be calculated, or a hypothetical caseload devised. Below is an example of a caseload of 186 medium-time demand cases, which is higher than the NAC standard of 150. The convention, in policy and practice, must shift from the “150-case limit” to a “100-point workload,” which denotes a full workload of any variety of case types. The derivation of point values and other details of workload analysis are explained in the workload section later in the report.

Offense Category	Number of Cases	Case Weight/ Points per Case	Weighted Caseload	Average Attorney Time in Hours	Total Time in Hours
Aggravated Assault	35	.60	20.9	8	280
Aggravated Robbery	46	.56	25.8	7.5	347
Family Violence Assault	56	.38	21.1	5.1	284
Drug Sale	27	.39	10.7	5.3	143
Homicide	22	.98	21.6	13.2	290
Total	186		100		1,344

The key to sustaining quality defense work is to ensure that caseloads remain manageable. That has been achieved in HCPD, with the cooperation of Harris County. The larger assigned counsel system does not achieve this goal, in Harris County and arguably elsewhere in Texas. Improvements can be expected with better record keeping by Harris County, and statewide with the impetus of H.B. 1318,⁶ which provides a mechanism to collect information on defense counsel.

Lesson: Quality of representation matters.

Competent and diligent representation demands more effort than minimal per-case or per-docket payment tends to support. Anecdotal reports suggest that in many court-appointed cases, particularly misdemeanors, counsel reads the offense report and takes a plea offer back to the client. Absent a glaring defect in the state’s case, the attorney recommends, and the client usually accepts, the prosecutor’s offer. Simply calling a witness, or doing some basic legal research, may make the difference between this result and a dismissal, further investigation, or a better plea offer. *Small acts of due diligence in defending a case can dramatically change results.*

Lesson: High volume cannot trump quality defense.

The nature of a large county justice system like the one in Harris County and similar counties in the country is to be efficient in moving cases. This high-volume processing approach makes it even more important to have a strong defense system. The overall outcome may not vary much for most cases, but for some, the additional effort presented by a strong defense can have a significant impact. This study reflects the higher level of cases dismissed for the public defender office and the higher utilization of investigators overall. These statistical findings suggest that acts of due diligence in defending a case can dramatically change results.

Lesson: Evaluation of assigned counsel is needed.

In Harris County, and even within the Texas Indigent Defense Commission, there has been a marked emphasis on evaluating public defenders, and very little focus on the workload or performance of the assigned counsel system. This evaluation and others have demonstrated the efficacy of the public defender model for providing meaningful, zealous performance of defense counsel. Assigned counsel is by far the predominant model in Harris County, as it is generally in Texas. Statewide there were about 365,000 assigned counsel cases last year compared to about 80,000 public defender cases.⁷ This reality strongly suggests that assigned counsel system performance should be subjected to comparable or greater evaluation effort. As stated by Professor Lefstein (see text accompanying footnote 1): “When adequate oversight of assigned counsel programs is lacking, the lawyers, in an effort to maximize their incomes, sometimes accept too many cases, because they are poorly compensated on a per-case basis for their services.”

Lesson: Public defenders can provide effective specialization.

As demonstrated in this evaluation, the public defender office can bring specific, targeted expertise to the table, such as representation of the mentally ill, successful appellate advocacy, advice to the criminal bar on issues such as a conviction's impact on immigration status, as well as the ability to help respond to systemic issues. Harris County and HCPD should continue to maximize the benefit received from the existing investment in legal expertise within their system.

Summary of Recommendations

The Justice Center evaluation leads to the following recommendations for HCPD:

- Continue to adjust the role of the office within the indigent defense system, ensuring that the county receives the maximum benefit from the specialized defense presence that HCPD provides.
- Conduct periodic caseload analysis and evaluate each division's caseload to determine if it should be modified.
- Develop 100-point workloads as the operative definition in agency policy.
- Improve efforts to quantify time spent on cases, with even greater attention to consistent and full reporting.
- After achieving more complete time records, recalculate the present analysis with full records.

II. BACKGROUND

A. The Challenge of Indigent Defense

The right to counsel as guaranteed by the Sixth Amendment applies in serious cases, those in which the State's power to incarcerate is at stake.⁸ The right is understood to mean a right to reasonably effective assistance to the accused.⁹ In an adversarial system of justice, fairness and accuracy are served, and even depend upon, the opposition between prosecutors and defense counsel requires sufficient resources and time to discharge their duties. All attorneys are required to provide "competent and diligent" representation,¹⁰ to "zealously assert their client's position" in their role as advocates, and to hold "special responsibility for the quality of justice."¹¹ Lawyers who cannot meet their professional responsibility in an individual case are subject to discipline. If workload prevents a lawyer from providing competent and diligent representation to existing clients, the lawyer has an obligation to refuse additional cases.

Indigent Defense Models

The major types of publicly financed defense counsel representation are public defender systems, assigned counsel programs, and contract attorneys. These systems of indigent defense are applied in a blended format throughout the country, with some statewide public defender systems that still utilize contract or assigned counsel in conflict cases or as a means of alleviating heavy caseloads. Other states have no centralized mechanism of public defense and employ differing methods of indigent representation at the local level with some counties using public defenders and others employing contract attorneys or assigned counsel.

"Public defender program" refers to salaried staff attorneys render criminal indigent defense services through a public or private nonprofit organization or as direct government employees, like their prosecutorial counterparts.

"Assigned counsel" refers to appointment of private attorneys by the court under either an ad hoc structure where private attorneys are appointed by judges on a case-by-case basis, or coordinated systems in which an administrator oversees the appointment of counsel.

"Managed assigned counsel program" refers to a contractual agreement with a governmental entity, nonprofit corporation, or bar association to provide management and oversight of assigned counsel, independent of the judiciary.

"Contract attorneys" refers to agreements with private attorneys or law firms to provide indigent defense services for a specific dollar amount and time period.

**Professor Norm Lefstein,
“Justice Denied: America’s Continuing
Neglect of Our Constitutional
Right to Counsel”**

The most well-trained and highly qualified lawyers cannot provide “quality defense services” when they have too many clients to represent, i.e., when their “caseload” is excessively high. It is critical, moreover, that in addition to caseload, an attorney’s other responsibilities (e.g., attendance at training programs, administrative matters, etc.) be considered in assessing an attorney’s overall “work-load.” . . .

Although national annual caseload standards have been cited for many years and both the ABA and the American Council of Chief Defenders have indicated that the numbers of cases in these standards should not be exceeded, the determination of the numbers of cases that a lawyer should undertake during the course of a year must necessarily be a matter of assessment. . . .

The issue of workload is important not only to public defenders but also to assigned counsel and to private attorneys who provide services pursuant to contracts. In the case of private attorneys, this should include oversight of the extent of their private practice in order to ensure that they have adequate time to devote to their indigent cases.¹⁵

Indigent defense presents a challenge to these ethical demands, historically as well as currently. Criminal justice services represent significant costs for counties and states, and subsidized defense for the accused can be an unpopular component of that expense. Regardless of the model, public defense systems and their funders struggle to provide sufficient resources so lawyers and their staffs can meet caseload demands while satisfying their professional responsibility to each client.¹²

As described in *Justice Denied*,¹³ a landmark report in the field, a litany of studies conveys “a grim view of defense services in criminal and juvenile cases, pointing out many problems in providing counsel across the country, including inadequate funding of defense systems as a whole; inadequate compensation for assigned counsel; inadequate funding of public defenders who are “treated like stepchildren;” pressure to waive counsel on juveniles and adult defendants; inconsistent indigency standards; [etc.]”¹⁴

Competent and diligent representation involves more effort than minimal per-case or per-docket payment tends to support. Anecdotal reports suggest that in many court-appointed cases, particularly misdemeanors, the assigned counsel reads the offense report and takes a plea offer back to the client. Absent some glaring defect in the state’s case, the attorney recommends, and the client usually accepts, the prosecutor’s offer. But offense reports are written in the light most favorable to the State and may not provide any insight to the reader. Simply calling a witness, or doing some basic legal research, make the difference between this typical result and a dismissal, further investigation, or a better plea offer. *Small acts of due diligence in defending a case can dramatically change results.*

The indigent defense system in each jurisdiction must ensure that due diligence is not the exception but the rule. Several well-established national guidelines are designed to help jurisdictions achieve that goal. In particular, the American Bar Association (ABA) has generated two useful sets of standards for the implementation and evaluation of indigent defense. Their 2002 “Ten Principles of a Public Defense Delivery System” is a set of brief but powerful concepts,¹⁶ that, in the words of the ABA Standing Committee on Legal Aid and Indigent Defendants, “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”

The ABA’s 1990 “Standards for Providing Defense Services” provide a more detailed framework for constructing indigent defense systems and¹⁷ the National Legal Aid and Defender Association has standards in many of the key operational areas of indigent defense.¹⁸

From a systemic perspective, strong indigent defense is the first line of defense against abuses in the justice system, a key component to the actual effectiveness of the system, and essential for maintaining the legitimacy of the judicial process. In Harvard University’s *Executive Session on Public Defense*, Dr. Tony Fabelo noted, “When lawbreakers confront a fair justice system, they get the message that the public values the law. When lawbreakers confront an unfair justice system, they get the message that the public values power and privilege, instead of the law.”¹⁹ The challenge of indigent defense is creating a cost effective and legally effective system so that states can fulfill their constitutional obligation, attorneys can fulfill their ethical obligation to each client, and punishment and rehabilitative resources are appropriately utilized.

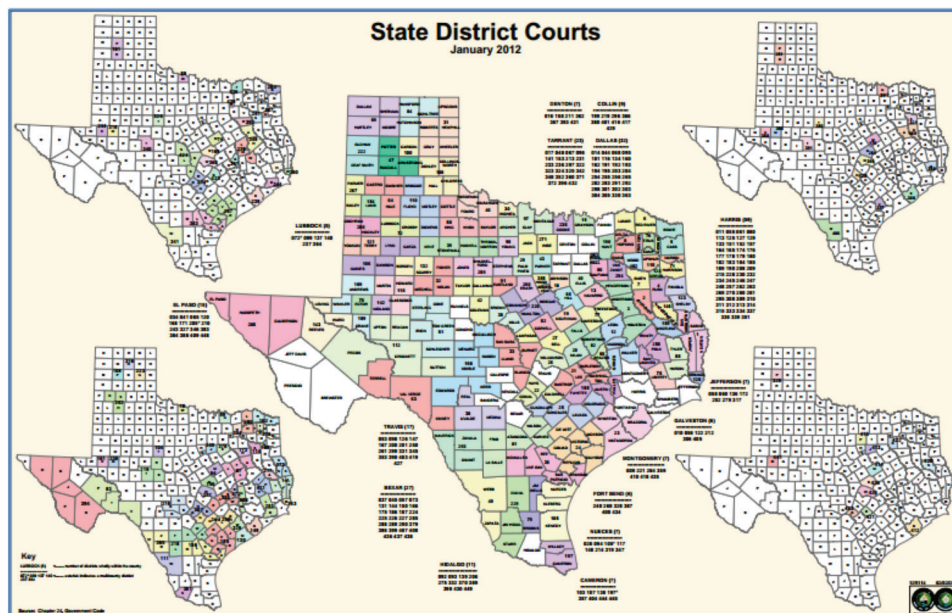
The ABA Ten Principles of a Public Defense Delivery System

1. The public defense function, including the selection, funding, and payment of defense counsel is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Workload is controlled to permit the rendering of quality representation.
6. Defense counsel’s ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

B. The Texas Response

Texas is both large and highly subdivided, with 254 counties, by far the most in the country (Georgia at second has 159²⁰); 456 district courts with felony jurisdiction; 237 county courts at law, with misdemeanor (and sometimes felony) jurisdiction; and 819 justices of the peace (judicial officers who are not necessarily lawyers and are often involved in the appointment-of-counsel stage of criminal proceedings).²¹ The state's district court map requires five images to depict the overlapping layers of district court jurisdiction, as shown in Figure 1.²²

Figure 1: Texas District Courts, January 2012



Texas's complex, decentralized government and justice system was designed to discourage the accumulation of power. This approach results in numerous elected officials at every level, for every branch, and shaped the state's unstructured approach to indigent defense. While prosecution was organized and funded under one or two elected officials at the county level, criminal defense was scattered and *ad hoc*. Each county, even each judge, could have its own method for admonishing the accused, determining indigence, appointing and paying counsel, and setting expectations (spoken and unspoken) about the system. In a state with partisan elections for the bench, and little or no accountability for handling indigent defense appointments, this created a risk of cronyism and its corollary, a lack of sufficient independence from the judge by defense counsel. These characteristics meant a weak indigent defense system, and in the late 1980s and mid-1990s,²³ after major newspaper stories documenting cronyism with the appointment of counsel, more attention was brought to these deficiencies. In addition, Texas Appleseed, a legal advocacy organization, made indigent defense reforms one of its goals and issued a report clearly analyzing the shortcoming of the structure at the time.²⁴

Texas Appleseed's December 2000 Findings

- Texas counties are not accountable for the quality or structure of their indigent defense systems.
- In most of Texas's county indigent defense systems, there are few mechanisms to guarantee that defense lawyers are consistently held accountable for the quality of representation they provide to indigent defendants.
- Lack of consistency and accountability result in wide and unjustifiable disparities in the treatment received by indigent defendants and their defense counsel, from county to county and court to court.
- The wide and uncontrolled discretion given to judges over attorney selection and compensation at the very least creates the potential for conflicts of interest and the appearance of conflicts of interest.
- The majority of judges we spoke with firmly believe that judges should have the exclusive authority to select attorneys for appointment to individual cases and to determine their compensation.

In the late 1990s, the Texas legislature began to consider providing some degree of state support and guidance to the localized implementation of indigent defense. In 1999, the 76th legislature passed the first version of a Fair Defense Act (FDA). Then-Governor George W. Bush vetoed the bill when trial judges objected to the proposed standards and changes in the mechanism for appointment of counsel.²⁵ With the added impetus of Texas Appleseed's 2000 study, Senator Rodney Ellis, whose district is predominantly in Harris County, achieved greater consensus and led the passage of a revised version of the FDA in 2001. It was signed by Governor Rick Perry, and became effective January 2002. The legislation provided a blueprint for meaningful interaction between state and local government through the creation of a state body to administer statewide appropriations and policies. The FDA established the Texas Task Force on Indigent Defense as a permanent standing committee of the Texas Judicial Council, staffed as a component of the Office of Court Administration, and charged with providing grant funding, technical assistance, and online resources to assist counties to maintain, establish, and develop cost-effective indigent defense systems. In 2011, the Texas Indigent Defense Commission (TIDC) succeeded TFID as a more independent and permanent body.²⁶ TIDC has been a successful program, with a number of accomplishments since the passage of the Fair Defense Act.²⁷

Texas Indigent Defense Commission Accomplishments

- Increased the number of full-time public defender offices from 7 to 19.
- Expanded the number of counties being served by some form of public defender office from 7 to more than 155, spanning all 9 administrative judicial regions.
- Added 79 new defense-related programs—ranging from direct client services to technology initiatives—that were created through Commission funding.
- Provided stakeholders across the state with vital resources including: model forms, plans and plan templates; presentations and trainings to more than 15,000 people; and an interactive and integrative website that counties use to report indigent defense data to the Commission, and that acts as a resource to legislators, the public, and the media by providing detailed county-specific indigent defense data.

TIDC has been cognizant of the national conversation on indigent defense, and interested in developing public defender offices as a targeted policy to supplement and improve local defense services in Texas. When the FDA was enacted in 2001, Texas had seven public defender offices.²⁸ By 2012, following discretionary grant support from TIDC, Harris County's (Houston) was one of 19 public defender offices and 3 managed assigned counsel systems in the state.²⁹ With TIDC's assistance, a regional capital defender office has provided counties with a new option for improving financial predictability as well as quality of defense in capital cases.³⁰ In 2008, TIDC issued a Blueprint for Creating a Public Defender Office in Texas, articulating the case for the public defender model.³¹

C. The Harris County System

In 2012, Harris County had a population of 4,253,700,³² which makes it larger than 24 states. It is the largest county in Texas, and is the third largest county in the nation. With 16 percent of the state's population, Harris County is disproportionately represented in new prison commitments (17 percent) and state jail commitments (26 percent).³³ The county's criminal justice policies and outputs have historically had a disproportionate impact on state criminal justice, with the highest proportion among large counties of offenders sent to prison.³⁴

The system also places a premium on efficiency. In a report developed for the Harris County Commissioners Court in 2009 by the Justice Management Institute, the county's criminal justice system was described thus: "Highly efficient front-end case processing... We know of no other urban criminal justice system that handles the early stages of cases more efficiently."³⁵ During FY 2012 approximately 126,000 cases were added to court dockets, including 44,053 felonies, 72,102 misdemeanors, and 9,722 juvenile cases.³⁶ Almost 71,500 cases involved the appointment of counsel to indigent defendants. Most Harris County defendants (57 percent overall) were indigent and require appointed counsel.³⁷

The “Wheel” System

The Code of Criminal Procedure specifies that counties may use a rotation system (also known as a “wheel” system) for appointing counsel. In Texas, the law is structured to make this the default method for selecting appointed counsel. This means that unless officials take the extra steps required to establish a public defender system or some other alternative system, they must appoint counsel in accordance with the Code of Criminal Procedure’s rotation specifications. Under a rotation system, as outlined in Article 26.04, Code of Criminal Procedure, attorneys are appointed to cases in rotating order from one or more countywide qualified appointment lists that are created by the district judges and/or the statutory county court judges in the county.

Harris County relies primarily on appointments from the “wheel” of eligible attorneys to provide counsel for indigents, in an “assigned counsel” system. The county spent over \$30 million on assigned counsel in FY 2012, with 25 percent of that cost, or \$7,587,766, supporting HCPD. Also out of the total \$30.2 million expenditure in 2012, \$12.5 million went for felony attorney payments and another \$835,431 for investigation and experts in felony cases. Misdemeanor attorney payments totaled about \$3 million, with about \$7,976 spent, total, for investigation in all misdemeanor cases, just under three tenths of one percent of total.³⁸

Harris County pays less per case than other urban counties in the state, particularly for misdemeanors, where the payout per case is about two-thirds of the large county average. Table 1 shows cost per case by urban county in Texas. This is not a new observation: in 2006, the TFID reported that the per-case payment range for felony cases among the top 10 counties was a low of \$394 in Harris County, up to \$1,170 in Collin County; misdemeanor pay per case ranged from \$63 in Harris County up to \$407 in Collin County.³⁹

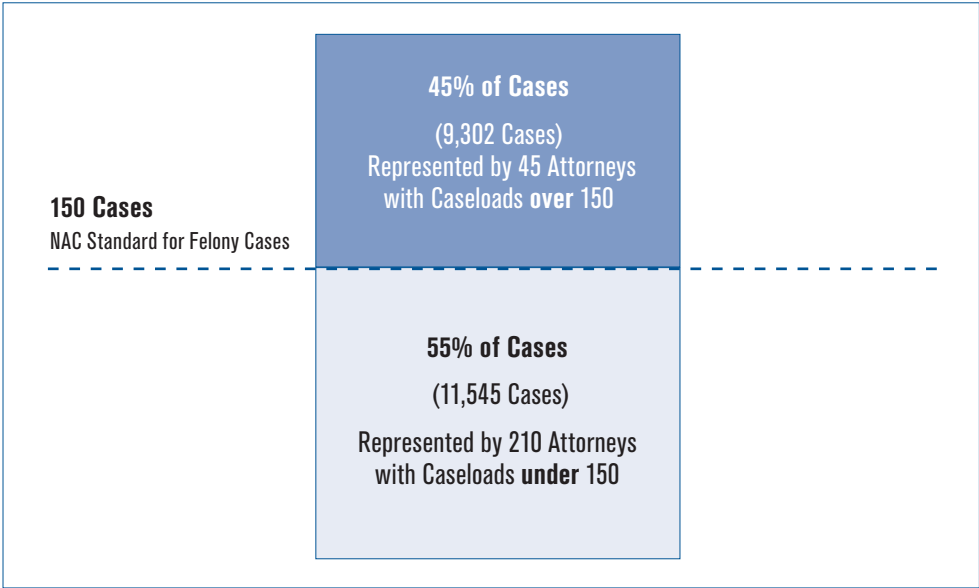
Table 1: Per-Case Indigent Defense Payouts in Urban Counties, FY 2012

	Felony	Misdemeanor	Juvenile	Population 2010
Harris	\$550	\$84	\$295	4,092,459
Dallas	\$604	\$150	\$555	2,368,139
Tarrant	\$766	\$218	\$235	1,809,034
Bexar	\$628	\$140	\$307	1,714,773
Travis	\$458	\$158	\$1,096	1,024,266
Average	\$599	\$134	\$322	

Source: Texas Indigent Defense Commission Reports

Figure 2 shows the number of cases that were paid in the Harris County felony assigned counsel system, for 255 attorneys and 20,847 cases, with a demarcation showing the National Advisory Committee (“NAC”) standard of 150 cases.⁴⁰ Almost half (45 percent) are cases represented by an attorney with over 150 felony cases assigned to him or her, not accounting for any other case assignments (e.g., misdemeanor) in Harris County, or in other counties, or any retained work. But it is important to note that, as this report demonstrates by analyzing HCPD’s actual workload, having a caseload in excess of the NAC standard is not conclusive evidence of being overworked; rather it depends, quite significantly, on the type of cases. With the county data currently available, it is not possible to analyze actual workload of assigned counsel.

Figure 2: Proportion of Cases Represented by Attorneys Above and Below the NAC Standard



Source: Harris County Auditor

In the misdemeanor assigned counsel system, the top 10 percent of attorneys were assigned over 452 cases in a year (with an average of 632 and the highest at 952 cases), and the next 10 percent of attorneys were assigned from 256 to 452 cases annually. There were 32 attorneys who received more than 400 cases—6 of whom received more than 400 in one court—exceeding the NAC standard of 400 misdemeanors.

In the juvenile assigned counsel system, one attorney accepted 524 cases in FY 2012. Twelve attorneys had more than the NAC standard of 200 juvenile cases, with an average of 327 cases per attorney. TIDC’s review in 2012 found that, in one district court, “the top 10 percent⁴¹ of recipient attorneys received 4.3 times their representative share of cases,” and that from all three district courts handling juvenile cases, “[o]ne attorney carried an appointed caseload that exceeded four times the NAC recommendations.”⁴²

The appointed counsel system in Harris County has been the subject of scrutiny and criticism in the media in 2007⁴³ and 2012.⁴⁴ As recently as the spring of 2013, TIDC received a complaint about the assigned counsel system in the county.⁴⁵

III. THE HARRIS COUNTY PUBLIC DEFENDER

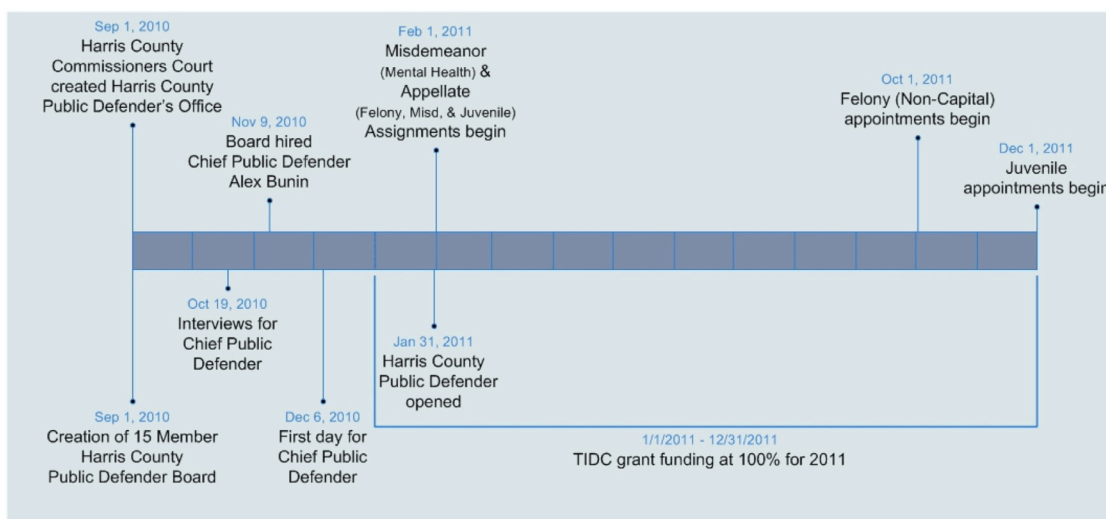
A. Creation

The creation of HCPD was the result of a well-planned process and the efforts of a mature county justice system with many talented players.⁴⁶ Beginning in late 2007, members of the defense bar had begun to pursue the creation of a public defender, eventually working with the judiciary and the organized criminal bar (a collaboration not without controversy), the director of TIDC, and Harris County State Senator Rodney Ellis. The Harris County Director of Budget Management Services was persuaded of the need to study the issue and on April 8, 2008, the Harris County Commissioners Court voted unanimously to conduct a study on establishing a public defender office. Three study teams were formed, one for the Criminal District Courts, one for the County Criminal Courts, and one for the Juvenile Courts. By the spring of 2009, each study team had formulated a public defender's model, which was formally submitted to Commissioners Court for review in September 2009. At the mid-year Budget Review in September 2009, Commissioners Court approved the concept of a Public Defender Office and forwarded the matter to the newly created Criminal Justice Coordinating Council to address implementation issues. At the October 9, 2009 Coordinating Council meeting, the Chair of the Coordinating Council (Commissioner El Franco Lee) created a Public Defender Office Workgroup (co-chaired by Commissioner Lee and then-Commissioner (now State Senator) Sylvia Garcia).

Harris County received a \$4.2 million grant from TIDC to establish the office. State grant funds covered 100 percent of HCPD's operating budget in 2011, while the county provided suitable office space and equipment. Accepting the grant to start HCPD in September 2010, the Commissioners Court appointed 15 members to serve on the Harris County Public Defender Board, and charged them with recommending the selection of a Chief Defender and monitoring the office's progress. On November 9, 2010, the Commissioners Court hired Alexander Bunin as the Chief Defender,⁴⁷ on the recommendation of the Public Defender Board, and based on interviews conducted on October 19, 2010. Chief Bunin began work on December 6, 2010.

Figure 3 shows the history of HCPD starting with the decision to create the office in September 2010, and the actual timeline for various divisions becoming operational. All divisions became fully operational by December 1, 2011.

Figure 3: Timeline of Public Defender Office Operations



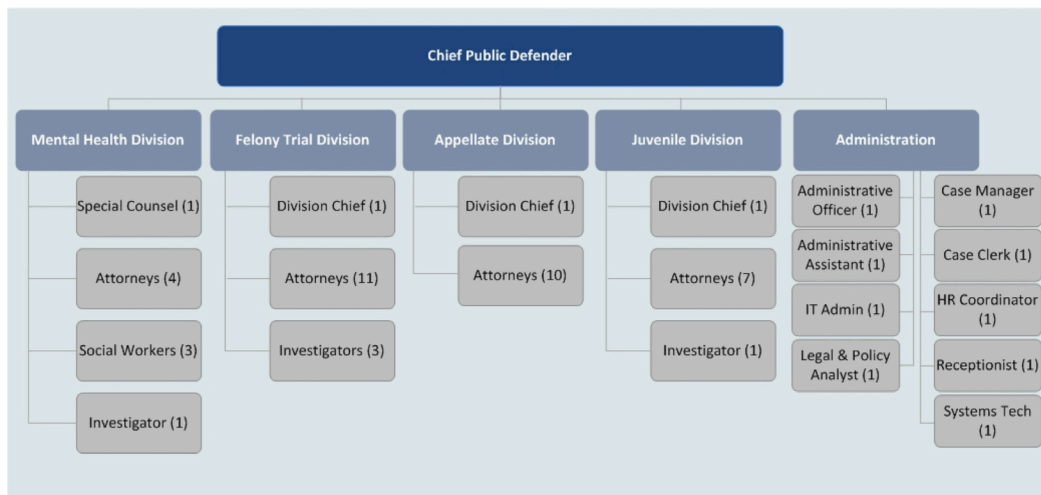
B. Structure

HCPD's office has administrative staff and four operational divisions—Mental Health, Appellate, Felony, and Juvenile. The Mental Health Division (MHD) is designed to provide specialized defense services to mentally ill defendants in misdemeanor cases, with attorneys supported by social workers that connect defendants with mental health services and can research their cases for mitigation purposes. MHD attorneys have specialized training in mental health law and have demonstrated aptitude and experience working with individuals with serious mental illnesses. The division has a chief (“Special Counsel”), four attorneys, three social workers and an investigator. It is staffed to handle 1,400 cases (350 per attorney). It is important to note that the Harris County Jail processes over 10,000 defendants a year that fit some mental health need criteria.⁴⁸

The Appellate Division includes a chief and 10 attorneys. It is staffed to handle 275 cases (25 per attorney), but the division had 206 cases assigned in FY 2012. The Felony (“Trial Bureau”) Division has 12 attorneys including the division chief, and 3 investigators. The caseload cap is 150 cases per attorney per year, with a goal of 30-35 cases open at any given time. With the Division Chief carrying a caseload, the office can handle about 1,700 cases annually across as many of the criminal district courts that participate. The Juvenile Division represents indigent youth facing charges in juvenile court and has one investigator and eight attorneys including the division chief. The chief has a 10-percent reduction in a full caseload for each lawyer supervised, so the entire caseload is 1,640 per year.

Figure 4 shows the current staffing pattern for each division of HCPD.

Figure 4: HCPD Organizational Structure



C. Cost

As previously noted, Harris County received a \$4.2 million grant from TIDC to establish the office. These funds are reduced progressively each year, with Harris County covering the non-grant funded portion, until the county fully funds the office, beginning October 1, 2014. In total, the office will receive \$14.3 million in grant funds over four years with a county match of \$15.2 million. The total yearly operational budget of the office, fully staffed, is estimated to be \$8.1 million for FY 2013.

“Cost per case” is an inevitable derivation of overall expenditure and total cases, but is not actually used as a management tool for either the Harris County assigned counsel or public defender systems. The assigned counsel system generally pays attorneys based on dockets, not per case; so, for example, appointed counsel for a week in misdemeanor court would be paid \$250 per day for a total of \$1,250 in a week, for handling a variable docket each day. If that week’s work involved 17 cases, the payment per case would be about \$73.50; for 14 cases the payment per case would be close to \$90. Overall cost per case is not employed as a basis for compensation, but is calculable by virtue of TIDC Indigent Defense Expenditure Reports.

Table 2 shows the total number of indigent cases, cases handled by the public defender, proportion of cases handled by the public defender, and “cost per case” calculated for the assigned counsel plus contract counsel,⁴⁹ and public defender parts of the system, by case type. At the rates paid in Harris County, assigned/contract counsel is cheaper per case for all categories except appellate.

Table 2: Indigent Cases, Percentage Public Defender and Cost Per Case Comparison

	Indigent Cases	Harris County Public Defender	Proportion Represented by PD	Assigned and Contract Cost/Case	PD Cost/Case
Misdemeanor	36,994	1,465	4%	\$84	\$668
Juvenile	7,874	451	6%	\$295	\$2,606
Felony	26,612	2,034	8%	\$550	\$944
Appellate	387	206	53%	\$9,069	\$8,454
Total	71,867	4,156	6%	\$299	\$1,399

Source: Texas Indigent Defense Commission

This comparison across systems is complicated by several factors including differing complexity of cases, differences in overhead, and differing outcomes. Differing complexity of cases is a particular factor in the misdemeanor comparison. As noted above, the Mental Health Division of HCPD provides specialized defense services to mentally ill misdemeanor defendants. Misdemeanor assigned counsel are among the least experienced lawyers in practice in the county, as evidenced by the differing qualifications for appointment in the district courts and county courts.⁵⁰

Table 3 shows the number and percent of case types assigned to HCPD, and not assigned to HCPD, for the life of the Felony Division. HCPD is receiving proportionately more cases of aggravated assault, aggravated robbery, burglary, murder, and sexual assault of a child, and proportionately less theft, DWI, and drug possession.

Table 3: Comparison of Case Types Assigned to HCPD and Remaining Harris County Distribution, Oct. 2011 - July 2013

	HCPD	New Cases Filed in Harris County	Proportion Represented by HCPD
Aggravated Assault	435	6,159	7%
Aggravated Robbery	354	3,543	10%
Auto Theft	0	1,092	0%
Burglary	336	4,108	8%
Drug Possession	726	14,068	5%
Drug Sale	239	4,009	6%
DWI	136	2,687	5%
Family Violence Assault	210	3,422	6%
Homicide	12	117	10%
Murder	53	281	19%
Other	943	14,485	7%
Sexual Assault Child	175	1,525	11%
Sexual Assault Adult	55	868	6%
Theft	440	9,042	5%
Total	4,114	65,406	6%

HCPD costs also include a relatively heavy overhead burden. For example, of the \$1,105 cost per case for misdemeanors, approximately \$270 is for overhead costs. The assigned counsel system has unknown county overhead, including the costs of scheduling counsel for dockets, determining indigence, assigning counsel, and the administration of payments to attorneys. Overhead for individual assigned counsel is also unknown.

The next part of this evaluation details the Justice Center’s analysis of defense outcomes by type of counsel. Consistent with several other recent studies, public defender outcomes are better than those for assigned counsel. Experienced lawyers in an office with controlled caseloads perform better than a collection of private attorneys of varying experience, some of whom make their living on high-volume assignments.

The comparison raises the key question, whether the cost of private assigned counsel may be too low to reliably provide the level of service to clients needed to meet acceptable standards of defense. Harris County has a low proportion of cases found indigent and entitled to appointed counsel compared to the other urban areas in Texas, and pays quite a bit less per appointed case than other urban counties⁵¹ in the state. A very small proportion of assigned counsel cost is spent on investigation in Harris County, markedly lower than in other urban counties. The assigned counsel system is designed for judges to have access to attorneys in their courtrooms and to allow a high volume of cases to be cleared quickly.

There is no doubting the good intentions of those who operate the system, and it does have the ability to compensate counsel for cases that are not quickly pled. But, the information at hand points to a system that produces guilty pleas quickly, rather than a system that rewards small acts of due diligence for better outcomes. The public defender model appears better designed to achieve that goal.

It is also apparent that public defender cost per case can be decreased, and the overall quality of justice increased, by adding more attorneys and assigning more cases to HCPD. There is evidently judicial appetite for expansion of the mental health division, and there is very likely to be ample caseload involving more clients who are mentally ill. The Harris County jail reportedly booked over 10,400 defendants in the previous year with a “special needs sheet,” meaning a mental health issue.^{52,53} Building up the office to absorb more of the caseload would better utilize the infrastructure and overhead already invested, and continue to lift up the practice of criminal defense overall.

The Justice Center assumes that HCPD will always receive a relatively small portion of the total appointments, but the office can and should have a disproportionately large and positive effect on indigent defense in Harris County because cases are fully investigated and litigated. That practice can be transferred to assigned counsel through training by HCPD, and observation of the success of their work. The office can have a substantial institutional effect upon changes to indigent defense that were not previously represented, and foster greater confidence within the criminal justice system and the community at large.

IV. EVALUATION

A. Independence

The public defense function, including the selection, funding, and payment of defense counsel is independent. (ABA Principle 1)

The point of this principle is to counteract “the phenomena of public defenders being pressured by members of the courtroom workgroup to emphasize rapid case processing over vigorous criminal defense.”⁵⁴ As stated by Barry Mahoney of the Justice Management Institute in a 2009 memo to the Harris County Criminal Justice Coordinating Council, “Defense attorneys who must keep watch over their shoulder, worried that their zealous advocacy may affect funding for their cases or the likelihood of future appointments, cannot be considered independent.”⁵⁵

The Harris County Public Defender Board has convened nine times since the inception of HCPD. The meeting minutes, reports provided by the staff to the board, and interviews with board members reflect an engaged and supportive group. They also suggest that the Board and Chief Defender Bunin understand the principle of independence and are willing to assert the independence of the office. In a significant example, Chief Bunin secured the support of the county for a grant application to the Department of Justice, discussed below. The perceptions of opposing appellate counsel in the District Attorney’s Office, interviewed by the Justice Center, also confirm that HCPD lawyers are not timid about asserting strong positions on behalf of their clients. HCPD outcome data and individual case successes, described below, also speak to independence as well as competence.

There is an additional, state-law element to this dimension, which has to do with the structure of the public defender part of the indigent defense system. In this case, the standards are based on articles 26.044 and 26.045, Texas Code of Criminal Procedure, which call for a public defender office that meets particular criteria. HCPD was established in close coordination with TIDC and in conformity with these statutory criteria, but one discrepancy with national ideals bears noting. Neither the statute nor the actual composition of the Board comport with the National Study Commission’s “Guidelines for the Legal Defense Systems in the United States,” Section 2.10.⁵⁶ That guideline calls for greater independence, with a majority of the board to consist of practicing attorneys, and not include judges, prosecutors, or law enforcement officials.

B. Balanced Defense Delivery

“Where the caseload is sufficiently high, the public defense delivery system consists of both an assigned counsel or defender office and the active participation of the private bar.” (ABA Principle 2)

Until the creation of HCPD, almost 75,000 Harris County indigent defense cases were handled exclusively by appointed counsel from the private bar. The adoption of a public defender office diversifies the delivery of defense services in the county, heading toward the balance that is implicit in ABA Principle 2. However, the size and scope of the public defender’s representation is small, as it is currently designed to absorb only 5-6

percent of the overall docket, particularly in felonies and misdemeanor trial-level cases. As noted previously, the public defender cost per case can be decreased, and the overall quality of justice increased, by adding more attorneys and assigning more cases to HCPD. Building up the office to absorb more of the caseload would better utilize the infrastructure and overhead already invested, and continue to lift up the practice of criminal defense overall.

C. Workload Control

“Workload is controlled to permit the rendering of quality representation.” (ABA Principle 5)

HCPD has established caseload caps in their Personnel Manual, section 10.4: “Caseload per attorney is consistent with those recommended by the National Advisory Commission on Criminal Justice Standards and Goals. The maximum annual caseloads are 150 felonies per attorney, or 200 juvenile cases per attorney, or 25 appeals per attorney. Misdemeanor mental health cases are not to exceed 350 per attorney. Any changes to these caseloads must be made known to the PDO Board.”

The court administrators at each level of court are adhering to the caps so that the office is not overloaded. The protocol for assigning misdemeanor cases to the Mental Health Division may be altered to control the inflow, supporting the caseload standard. This twin set of constraints—the agency’s policy and the administrators’ practice—provide a satisfactory basis for concluding that workload control is in place. HCPD took the next step—keeping time data on their work—and the Chief Defender asked the Justice Center to analyze workload in a fashion that provides management-relevant information.

HCPD’s case management system has the ability to track the amount of time each attorney spends on different activities related to his or her casework. In this instance the analysis was conducted for felony cases. The data in the system can be disaggregated by distinct offenses, but for the purposes of this analysis these offenses were aggregated to fifteen categories as defined by the Office of Court Administration in their district court reporting requirements.⁵⁷ The Felony Division resolved a total 4,114 cases between October 2011 and August 2013, but only 1,602 (39 percent) had associated time records available to analyze. (In prior reports to HCPD as part of this project, the Justice Center highlighted the need for the office to improve their time reporting.) Nevertheless, the available number of cases with time records was large enough to provide for this exploratory look.

Table 4 shows the average time a public defender spent on each case by the case’s offense category. An average felony case took the public defender 6.5 hours of work from assignment to disposition, but there is wide variation by case type. Cases involving a charge of murder took an average of 35 hours and 47 minutes, the longest of any felony. Burglary cases took 4 hours and 50 minutes.

Table 4: HCPD Average Time Spent by Felony Case Type, Oct. 2011 - Aug. 2013

OCA Category	Time to Disposition
Aggravated Assault	8 Hours
Aggravated Robbery	7 Hours 33 Minutes
Burglary	4 Hours 50 Minutes
Drug Possession	3 Hours 48 Minutes
Drug Sale	5 Hours 18 Minutes
Driving While Intoxicated (DWI)	4 Hours 6 Minutes
Family Violence Assault	5 Hours 4 Minutes
Homicide	13 Hours 10 Minutes
Murder	35 Hours 47 Minutes
Other	5 Hours 25 Minutes
Sexual Assault Child	17 Hours 15 Minutes
Sexual Assault Adult	18 Hours 36 Minutes
Theft	5 Hours 2 Minutes
Total	6 Hours 30 Minutes

A public defender can, in theory, work 2,080 hours in a year, assuming a 40-hour workweek for the 52 weeks in a year; however, holidays, vacation, and other administrative tasks have to be subtracted from this number to calculate a more realistic number of hours that can be dedicated to casework. Harris County government grants ten holidays in a year, or 80 hours, and, for this analysis, a public defender is assumed to take another 10 days, or 80 hours, of vacation.⁵⁸ This leaves a balance of 1,920 working hours. Based on guidance from the Chief Defender, the hours were further reduced by 30 percent (576 hours) to account for non-case responsibilities (e.g., CLE, advice to private counsel), sick time, cases not represented until disposition (clients may hire a new attorney, have a conflict, or pass away before their cases are resolved), and probation violation hearings. Based on these assumptions, the average annual available workload total is assumed to be 1,344 hours.⁵⁹

Table 5 shows the number of cases an attorney could dispose if each attorney had 1,344 hours available to spend in a year on only that type of case. An average case took 6.5 hours, resulting in a possible annual caseload of 206 cases (1,344 available hours divided by 6.5 hours per case equals 206 cases). Attorneys could carry a caseload ranging from 38 cases involving a charge of murder to 278 cases involving a burglary charge. Of course, attorneys have mixed caseloads, but based on this information, an analysis of each attorney caseload can be calculated.

The final column of Table 5 shows the case type in terms of points per case (also known as case “weight”) to be used in calculating an individual public defender workload, and potentially, the office capacity. This “weight” is calculated by converting the annual caseload to a 100-point scale. For example, public defenders averaged 4.8 hours to dispose a burglary case. In a 1,344 hour year, public defenders could resolve 278 cases (1,344 hours divided by 4.8 hours per case equals 278 cases), which, standardized to a 100 point scale yields a case weight of .36 (100 divided by 278 equals .36).

For planning and budgeting purposes, HCPD should conduct periodic caseload analyses. Presently, the felony caseload limit set by HCPD's board is 150, based on a national standard that was articulated, without empirical evidence, in the mid-1970s. The convention, in policy and practice, must shift from the "150-case limit" to a "100-point workload," which denotes a full workload of any variety of case types. Given the exploratory nature of this analysis, however, the office should first achieve more complete time records and recalculate the present analysis with full records before recommending an increase in caseloads.

Table 5: Number of Cases Disposable Annually by Offense

OCA Category	Time to Disposition	Annual Caseload	Case Weight/ Points Per Case
Aggravated Assault	8 Hours	168	0.60
Aggravated Robbery	7 Hours 33 Minutes	178	0.56
Burglary	4 Hours 50 Minutes	278	0.36
Drug Possession	3 Hours 48 Minutes	353	0.28
Drug Sale	5 Hours 18 Minutes	253	0.39
Driving While Intoxicated (DWI)	4 Hours 6 Minutes	328	0.30
Family Violence Assault	5 Hours 4 Minutes	265	0.38
Homicide	13 Hours 10 Minutes	102	0.98
Murder	35 Hours 47 Minutes	38	2.66
Other	5 Hours 25 Minutes	248	0.40
Sexual Assault Child	17 Hours 15 Minutes	78	1.28
Sexual Assault Adult	18 Hours 36 Minutes	72	1.38
Theft	5 Hours 2 Minutes	267	0.37
Total	6 Hours 30 Minutes	206	0.49

Table 6 shows three examples of the potential use of case weights in calculating the maximum number of cases a public defender might carry, given their combination of cases. The first example is of a mix of 59 High-Time Demand cases, the second example combines 186 Medium-Time Demand cases, and the final example has a variety of 295 Low-Time Demand cases.

HCPD can use the case weights to track attorney workload at any point in the year and should do so regularly to effectively distribute cases. A simple monthly report could show the number of points a public defender has accumulated to date for the year and project if an attorney is on track to go over the 100-point cut-off for the year. For example, 100 points over 12 months is the equivalent of 8.3 points per month, so a public defender with over 24.9 points after 3 months should not take more cases unless he is able to free up capacity (3 months times 8.3 points is 24.9 points). Conversely, the report would also show if any public defender has additional capacity. Anyone less than 24.9 points at the end of three months may have the capacity to take more cases.

Table 6: Examples of Implementing Case Weights

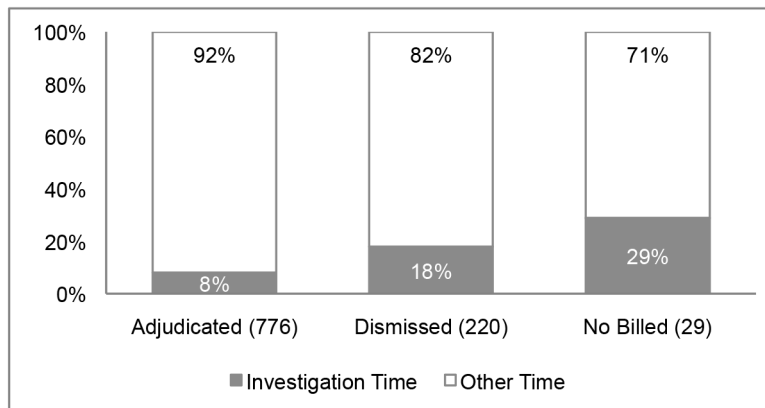
	Category	Cases	Case Weight/ Points Per Case (Rounded)	Total Points	Hours to Dispose	Total Hours
High-Time Demand	Murder	16	2.66	43	35.8	573
	Sexual Assault of an Adult	19	1.38	26	18.6	353
	Sexual Assault of a Child	24	1.28	31	17.3	414
	Total	59		100		1,340
Medium-Time Demand	Aggravated Assault	35	.60	20.9	8	280
	Aggravated Robbery	46	.56	25.8	7.5	347
	Family Violence Assault	56	.38	21.1	5.1	284
	Drug Sale	27	.39	10.7	5.3	143
	Homicide	22	.98	21.6	13.2	290
	Total	186		100		1,344
Low-Time Demand	Burglary	45	.36	16.2	4.8	217
	Drug Possession	52	.28	14.7	3.8	198
	DWI	75	.30	22.8	4.1	307
	Family Violence Assault	70	.38	26.4	5.1	355
	Theft	53	.37	19.9	5.0	267
	Total	295		100		1,344

These case weights are dynamic, and location specific. Time spent is likely to fluctuate from year to year naturally, but any change in the amount of time necessary to dispose a case by category will affect the weights. If weighting cases proves to be a useful management tool, HCPD should update the calculations annually. The updates would reflect the most recent annual time demand and case distribution, encourage proper record keeping, and allow a capacity report to effectively ensure proper time appropriation.

One more example emphasizes the value of workload data entry and analysis. Figure 5 shows a workload analysis of the proportion of investigator time by case outcome in felony HCPD cases and demonstrates that more investigation time correlates with positive case outcomes. The original input of investigator time may lead to early case resolution and better defense outcomes.

A hallmark of public defender offices that distinguish them from assigned counsel systems is the existence and ready availability of investigative resources. HCPD spent \$534,174 for 3,950 cases (felony, misdemeanor and juvenile) in a year, an average of \$135 per case. This compares to the assigned counsel system, in which the county spent \$874,638 for 67,530 cases, an average of \$13 each. Broken out by case type for assigned counsel, for juvenile cases the average is \$4.21 per case, for felonies the average is \$33.99, and for misdemeanors the average is \$0.22. These figures suggest that investigators are underutilized by the assigned counsel system, which allows expenditures for investigation but rarely employs them in practice.

Figure 5: Proportion of Investigator Time by Outcomes in Felony Cases



D. Parity

“There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.” (ABA Principle 8)

HCPD’s Personnel Manual, Section 12.1, states: “All salaries are based on pay scales similar to those for other Harris County employees, particularly the District Attorney’s Office.” The Chief Defender reported that he was provided details of every salary in the DA’s office and set salary maximums for HCPD that were consistent with those. HCPD annual salaries for lawyers are capped as follows: Chief Defender - \$155,424;⁶⁰ Division Chief - \$140,064; and Assistant Public Defender - \$131,000.⁶¹

In Harris County, the typical fear of public defenders, that low salaries will not attract skilled attorneys, is turned around: the Justice Center interviews revealed a local concern that HCPD salaries are high compared to the District Attorney’s office, creating an incentive for movement to the new office. (Only one attorney in HCPD is from the District Attorney’s office).

The Justice Center compared HCPD salaries with those in the Harris County District Attorney’s Office, based on a public government employee salary database.⁶² The comparison did not reflect strict parity with HCPD, and line-by-line comparison is not possible, but the salaries are not dramatically different. Addressing the thrust of the standard, it does appear that HCPD has been able to attract talented staff, and is competitive in the employment market.

E. Process

Conduct prompt and accurate magistration proceedings that inform and explain right to counsel to accused and then provide reasonable assistance to the accused to complete necessary forms to request counsel. (Arts. 14.06 & 15.17 TCCP; TIDC Core Requirement 1)

Institute a fair, neutral, and non-discriminatory attorney selection process. (TCCP art. 26.04; TIDC Core Requirement 5)

Promulgate a standard attorney fee schedule and payment process. (TCCP art. 26.05; TIDC Core Requirement 6)

“Process” focuses upon connecting the client to a lawyer—the prompt and accurate advisement of the right to counsel, attorney selection, and the existence of a fee schedule and payment process. These dimensions are routinely measured by TIDC in its work process, and are based on TIDC’s core requirements, which in turn are based on Texas law. These measures are not directed specifically to public defender offices, so were not directly within the scope of the Justice Center’s evaluation in this instance. TIDC has examined the above aspects only for the juvenile indigent defense system and found them to generally comply with these provisions.⁶³

F. Quality

“Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.” (ABA Principle 3)

“Defense counsel is provided sufficient time and a confidential space within which to meet with the client.” (ABA Principle 4)

“Defense counsel’s ability, training, and experience match the complexity of the case.” (ABA Principle 6)

“The same attorney continuously represents the client until completion of the case.” (ABA Principle 7)

“Defense counsel is provided with and required to attend continuing legal education.” (ABA Principle 9)

“Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” (ABA Principle 10)

“Quality” bundles the baseline elements of having defense attorneys with the appropriate skill set, ongoing training, and supervision. These standards apply to both the Harris County system overall, and HCPD in particular, but the Justice Center was charged to evaluate only HCPD and not the larger system of controls that is represented by these standards.

HCPD’s division of work supports the provision of counsel commensurate with experience and training. HCPD has adopted the State Bar’s Performance Guidelines for Non-Capital Criminal Defense Representation as part of its employee performance standards and basis for evaluation, an important indication of quality control.⁶⁴ The supervision and standards provided for by HCPD’s Personnel Manual, in conjunction with caseload/workload controls, support the achievement of systemic quality and efficiency. Positive defense outcomes (detailed below) suggest that this achievement is occurring. Other qualitative indications were positive for HCPD performance as well, including the survey of defense counsel, interviews with opposing counsel of the Appellate Division, and interviews with most judges.

ABA Principles 3 and 4 apply to the Harris County system, while Principles 6, 7, 9 and 10 apply to both the system and to HCPD. The Justice Center did not review records or otherwise analyze the first two principles with regard to the system, but did survey defense counsel in the county and found that attorneys generally have sufficient time, but experience a lack of privacy in the jail visitation space. With regard to continuous representation, both the assigned counsel system and HCPD require that counsel represent the client from appointment to case closure, unless permitted by the court to terminate representation. The application of this requirement was demonstrated by the fact that HCPD attorneys carried cases over from their previous practice into HCPD when they came to the new office.

V. DEFENSE OUTCOMES

A. Methodology

Data used in this evaluation came primarily from three sources: HCPD’s in-house data system; data warehouses in Harris County; and state data, in particular data reported to and held by the Texas Office of Court Administration (the administrative office for the Texas court system). HCPD’s system captures case movement milestones and time expenditures by attorneys and other staff. This was the data source for all internal case disposition, time study, and workload analysis.

Table 7 shows the source and data provided by Harris County. The Auditor and Budget Offices were able to share data created and used by their offices. The Administrative Office of the District Courts and Harris County Court Manager’s Office created individual level datasets from specific requests.

Table 7: Harris County Data Sources

County Agency	Data Contributed
Harris County Auditor	FY 2012 voucher data showing payments to appointed counsel
Harris County District Courts’ Administrative Office	<ul style="list-style-type: none"> • Felony case data for all hired and appointed attorneys • Aggregate case disposition data • Juvenile disposition data
Harris County Office of County Court Management	<ul style="list-style-type: none"> • Misdemeanor case data for public defender pilot program • Aggregate case disposition data
Harris County Budget Office	Budget information for county indigent defense
Harris County Criminal Lawyers Association	Members provided answers to a Justice Center survey

Table 8 shows the source and data provided by different state agencies. The Office of Court Administration created an individual level dataset using the Texas Appeals Management and E-filing System (TAMES), which contains case information for the intermediate courts of appeals. The Texas Department of Public Safety (DPS) provided criminal history files for clients represented by HCPD. The remaining data are available in aggregate form in online resources.

Table 8: State Data Sources

State Agency	Data Contributed
Office of Court Administration	<ul style="list-style-type: none"> • TAMES records for the 1st and 14th Courts of Appeal • Specific case history information for Appeals cases • Aggregate filing and disposition data for county, district, and appellate cases
Texas Indigent Defense Commission	<ul style="list-style-type: none"> • Indigent case expenditures by type, year, and court • Number of indigent cases with representation by counsel (assigned, contract, and public defender) by court • Grant performance data reports
Texas Department of Public Safety	• Criminal history data for clients

The approach to comparing case outcomes by type of representation (hired, assigned, or public defender) varied slightly by HCPD division due to data availability, but the overall approach was similar: the Justice Center created random samples, matched along key indicators, to compare to the client group represented by HCPD. The same client outcome analyses were calculated for HCPD and its matched cohorts, which varied by division.

There were three groups tracked to measure outcomes for the Misdemeanor Mental Health Division. The creation of the first two groups relied on information from the Harris County Court Manager's Office. The first group, the "pilot study," consisted of cases docketed in County Courts 12, 13, and 14 and assigned to one of two assigned counsel ("wheel") attorneys with mental health credentials. The cases were selected for this special wheel if they met a client selection algorithm adopted for the program by the county, that uses mental status, criminal history and charge(s) as a basis for selection. The disposition for these cases occurred prior to the opening of HCPD. The second group, the "matched group," was selected through the same algorithm during the same period, but had cases randomly docketed in the other 12 county courts, and were represented by unspecialized assigned counsel. The third group, "HCPD clients," came about after HCPD started operations. The same program selection algorithm for mentally ill defendants was then used to assign every appropriate case to the Mental Health Division of the office. There are no match cases represented by non-HCPD attorneys after the office became operational, which is why the "pilot" and "match" comparison groups had to be selected from the past.

A match for appellate cases was not possible. The number of appellate cases relative to the volume of all cases disposed is small (about 400 indigent cases appealed yearly out of over 70,000 indigent defense cases disposed) and the uniqueness of each appeal makes it difficult to match appellate cases represented by private or assigned counsel with HCPD represented cases. In lieu of such a match, aggregate, non-HCPD case results from the 1st and 14th Courts of Appeal (which include 9 other counties in addition to Harris County⁶⁵) were compared to HCPD outcomes in those two courts to get an overall picture of disposition outcomes. In addition, the Office of Court Administration provided case data from the 1st and 14th Courts of Appeal from their TAMES case management system, which was used for analysis of outcome and to identify gaps in the appellate data in HCPD's system.

The Felony Trial Division had the most robust match, because there are few limitations on the cases represented by the division; the division does not represent clients in capital cases and may be excluded from courts at the judge's request, but otherwise can represent any felony case. After assessing the felony division's cases by race, gender, and offense level, a proportionate stratified random sample⁶⁶ was prepared to select nearly exact distributions for cases represented by HCPD, private counsel, and assigned counsel.

The Juvenile Division case comparison was not possible. The Justice Center requested similar data as for felonies from the District Clerk's office, but received an incomplete dataset because of information system limitations and privacy regulations. The various data storage tables at the District Clerk's office did not have identifiable connectors, or unique identifiers to link information on one table to another, which prevented proper extraction of variables.⁶⁷ Legal interpretations of privacy by the office did not allow them to include identifying variables in the data requested.⁶⁸ Therefore, after examination of the data, the Justice Center concluded that it was not possible to make appropriate outcome comparisons for the Juvenile Division. The missing race and gender variables limited the ability to create a proportionately matched sample. Too many assumptions were necessary to connect multiple cases without identifying information, so any client-level analysis lacked certainty. Information about the attorney of record was not included in the District Clerk's data, so there were no data available to differentiate between cases represented by hired or appointed counsel.⁶⁹

There was an attempt to use aggregate data from the Office of Court Administration but these statistical reports were also incomplete.⁷⁰ The Juvenile Division section below reviews HCPD Juvenile Division outcomes, but makes no attempt to compare across attorney type. Any comparison would not be comprehensive or defensible.

Table 9 summarizes the comparisons by division and includes the source of the matching dataset.

Table 9: Data for Comparisons by HCPD Division

	Flags Matched	Data Source
Misdemeanor Mental Health	Met Mental Health Program algorithm	Harris County Office of County Court Management
Appellate	Cases resolved by the 1 st or 14 th Courts of Appeal	Texas Office of Court Administration (OCA) TAMES data
Felony Trial	<ul style="list-style-type: none"> • Race • Gender • Offense Charge 	Harris County District Courts' Administrative Office
Juvenile	No match possible	Harris District Clerk's Office

B. Defining Case Outcomes

Positive defense outcomes suggest systemic adequacy of the defense function.

This is the dimension where the discussion of metrics becomes the most interesting, and the most contentious. Case outcomes cannot be boiled down to a single, specific standard, and defense attorneys differ on the value and viability of measuring differing performance outcomes. The Justice Center used the flexible concept of “positive defense outcomes suggest systemic adequacy of the defense function” as a way to bundle a variety of analyses such as those depicted here. These are simple, plausible, and measurable with the data available.

Defining Positive Defense Outcomes

No Bill: a grand jury finding of no probable cause for a criminal charge brought by law enforcement.

Dismissal: the prosecution on its own motion ceasing pursuit of a criminal charge.

Charge Reduction: a plea bargain resulting in conviction of a less serious offense.

Acquittal: a finding of “not guilty” by a judge or jury.

Reversal: an appellate court’s rejection of a trial court result.

In the Harris County context, the operative reference point is the assigned counsel system. Outcomes were computed comparing HCPD attorneys' case outcomes with those of the assigned counsel in the misdemeanor and felony systems, with matched sets of clients by demographics, offense level, criminal history, and with the limitations described above. This comparison is useful in the current situation, where the county should be seeking the right mix between public and private defense representation. The Justice Center found that, with a few exceptions, public defender attorneys delivered better defense results than assigned counsel attorneys. This is consistent with several other recent studies, most notably the Public Policy Research Institute's recent study of defense delivery in Wichita County, Texas. They found that defender clients in Wichita County were 23 percent more likely to have all charges dismissed and 10 percent less likely to be found guilty than defendants represented by private assigned attorneys.⁷¹ Other recent studies have found:

- Mental health public defender clients in Bexar County were significantly less likely to have a guilty verdict or, if convicted, more likely to receive a probationary disposition.⁷²
- Compared to appointed counsel, public defenders in Philadelphia reduced the murder conviction rate by 19 percent, reduced the probability that their clients receive a life sentence by 62 percent, and reduced overall expected time served in prison by 24 percent.⁷³
- In a major national study, defendants represented by assigned counsel received the least favorable outcomes in that they were convicted and sentenced to state prison at higher rates compared to defendants with public defenders. These defendants also received longer sentences than those who had public defender representation.⁷⁴

C. Mental Health Division

The Mental Health Division provides specialized defense services to mentally ill misdemeanor defendants, with attorneys supported by psychosocial services staff, who connect defendants with mental health and other services.⁷⁵

Table 10 shows the outcomes for all misdemeanor cases represented by the Mental Health Division from January to June of 2011. The majority of cases were resolved with a finding of guilty—all by *nolo contendere* (no contest of evidence) or guilty pleas (63 percent). However, a high proportion of the cases were dismissed (30 percent).

Table 10: Case Outcomes for Mental Health Division, Jan. - June 2011

Case Outcome	Number of Cases	Percentage
Dismissed	131	30%
Deferred Prosecution	11	3%
Guilty	271	63%
Civil Commitment	18	4%
Total	431	100%

Table 11 lists case outcomes by individual clients for three matched groups of mentally ill defendants, who differed only in their attorney type—public defender, pilot program assigned counsel, and a client match group receiving appointed “wheel” counsel.⁷⁶ A client can have multiple cases disposed with different outcomes. The average number of cases per client for HCPD misdemeanor population was 1.2. Note that in this analysis, the client is categorized by the most severe disposition of any of his cases. For example, a client with one case dismissed and one case guilty is coded in the guilty category. A client with all cases receiving deferred adjudication is coded in the deferred adjudication category.

Dismissals were five times more likely for HCPD clients than the match group, i.e., HCPD secured dismissals for 27 percent of clients versus 6 percent in the match group. The clients in the pilot study did slightly better than the match group, with 7 percent of clients getting charges dismissed, but did not approach the results achieved by HCPD.

Table 11: Comparison of Misdemeanor Mental Health Client Outcomes by Attorney Type

	Public Defender		Pilot Study		Match Group	
	Number	Percent	Number	Percent	Number	Percent
All Charges Dismissed	97	27%	2	7%	7	6%
Deferred Adjudication	15	4%	0	0%	1	1%
<i>Guilty on All Charges</i>	210	59%	24	86%	107	89%
<i>Guilty on One or More Charges</i>	32	9%	2	7%	5	4%
Total Guilty	242	68%	26	93%	112	93%
Total Clients	354		28		120	

Table 12 shows punishment outcome by attorney type for the misdemeanor mental health clients in the three groups. The public defender clients were more likely to receive a slightly longer jail sentence (43 days) than those in the pilot study represented by specialized mental health assigned counsel (38 days) and those in the match group represented by assigned counsel (28 days).

Table 12: Punishment Outcome by Attorney Type for Misdemeanor Mental Health Clients

	Public Defender			Pilot Study			Match Group		
	Number	Percent	Length	Number	Percent	Length	Number	Percent	Length
Probation	3	1%	303 Days						
County Jail	236	99%	43 Days	26	100%	38 Days	112	100%	28 Days
Total Guilty	239⁷⁷			26			112		

Table 13 shows the proportion of clients with a Class A misdemeanor conviction by attorney type; Class A is the most serious misdemeanor level in Texas. This analysis suggests that the slightly longer jail sentences for the convicted HCPD clients may be a reflection of more severe cases assigned to HCPD: 37 percent of HCPD’s client resolutions involved a Class A misdemeanor compared to 27 percent and 29 percent for the pilot and match group, respectively.

Table 13: Proportion of Clients with a Class A Misdemeanor Conviction by Attorney Type

	Public Defender		Pilot Study		Match Group	
	Number	Percent	Number	Percent	Number	Percent
Class A Misdemeanor Convictions	88	37%	7	27%	36	29%
Total Convictions	236		26		123	

Table 14 shows the recidivism rate for HCPD’s mental health clients and the comparison groups. Recidivism is defined as the percentage of persons arrested within one year of case disposition for each of the three misdemeanor study groups.⁷⁸ About half of all clients were rearrested within one year, regardless of the type of defense received. Slightly less than half of the public defender clients (49 percent) were rearrested within one year, compared to 50 percent for the matched group referred to assigned counsel, and 54 percent of the pilot study group, who were referred to the specialized mental health assigned attorney.

Table 14: Recidivism Rates for Clients by Attorney Type

	Public Defender Jan 2011 to June 2011	Pilot Study Misdemeanor MH Attorney	Match Group Assigned Attorney
Percentage of Clients Rearrested One Year After Disposition	49%	54%	50%
Days to Rearrest	105	113	120

Evaluating defense counsel by the later success of their clients is difficult and ordinarily should not be a measure that applies to the performance of counsel. Defense counsel’s role is to provide effective representation at the time of the trial or plea, and not to rehabilitate the defendant. A number of factors wholly independent from attorney representation drive recidivism, and attorney representation is not traditionally thought to have any effect on recidivism. HCPD does provide community outreach to influence and encourage the provision of these services to diminish countywide recidivism rates, but the office is not responsible for rehabilitative services. The Justice Center performed the recidivism analysis because officials were curious to review these results.

Finally, in evaluating the work of the Mental Health Division, the Justice Center team added a qualitative component, interviewing some of the county court judges who refer cases to the MHD. The interviews yielded enthusiastic reports, with words like “thrilled” and “extremely professional.” These interviews were followed by a survey delivered to the 15 misdemeanor judges, which garnered only 4 responses. Again, the reviews were consistently favorable, and highlighted the assistance that MHD attorneys provide to other criminal defense attorneys.

D. Felony Trial Division

The Felony Trial Division represents any indigent client charged with a non-capital felony. The office appears on the wheel for random assignments, but court coordinators have the opportunity to assign more complicated cases to the office, such as higher-level felonies or cases in need of investigation staff time. For felony outcomes, the evaluation followed slightly over a year’s worth of HCPD cases (October 2011 through October 2012) to closure and compared those outcomes to outcomes for comparable groups of clients with

assigned and retained counsel cases. Of those cases assigned to HCPD, 41 total or 2 percent of the cases were “no billed” by the grand jury and are not included in the comparison.

Table 15 shows the outcomes for HCPD’s felony cases in the period studied. During this period, HCPD was appointed to 1,725 indicted cases. HCPD received dismissals in 408 cases, or 24 percent of the cases. The division also took 58 cases to trial, which resulted in 52 adjudicated guilty and 6 acquittals.

Table 15: Outcomes for HCPD Felony Cases, Oct. 2011 - Oct. 2012

	Number of Cases	Proportion		
Dismissed	408	24%		
Deferred	319	18%		
Guilty	991	57%	52 by Trial	939 by Plea
Acquitted	6	0.3%		
Other	1	--		
Total Indictments	1,725			

Table 16 shows comparative client outcomes for three matched groups of defendants that differed only in their attorney type—public defender, assigned counsel, and privately retained counsel. HCPD performed comparably to retained counsel on achieving full dismissals (dismissed on all charges) for clients—17 percent to retained counsel’s 18 percent—and identically on obtaining dismissals on some charges and guilty findings on others (8 percent). They outperformed appointed attorneys with every measure as they achieved a greater proportion of dismissals, deferred sentences, and acquittals, and a smaller proportion of clients found guilty. In fact, HCPD secured acquittals on all charges at three times the rate of the appointed and retained match samples.

Table 16: Comparison of Felony Client Outcomes by Attorney Type

	Public Defender		Appointed Attorney		Retained Counsel	
	Number	Percent	Number	Percent	Number	Percent
All Charges Dismissed	246	17%	168	11%	299	18%
Deferred Adjudication	303	21%	267	17%	595	37%
<i>Guilty on All Charges</i>	767	54%	989	64%	605	37%
<i>Guilty on One or More Charges</i>	110	8%	113	7%	131	8%
Total Guilty	877	61%	1,102	72%	736	45%
Acquitted on All	5	.3%	2	.1%	2	.1%
Total Clients	1,431		1,539		1,632	

Table 17 shows outcome comparisons, by attorney type, for clients who had their cases go to trial.⁷⁹ Not only did HCPD clients have fewer findings of guilt than appointed attorneys, the office was far more likely to take its cases to trial than appointed counsel or retained counsel. And once at trial, HCPD clients were more likely to get acquittals for all charges; 22 percent of HCPD clients who were tried were found not guilty and did not face a new trial.

Table 17: Comparison of Felony Client Outcomes by Attorney Type for Tried Cases

	Public Defender		Appointed Attorney		Retained Counsel	
	Number	Percent	Number	Percent	Number	Percent
Acquitted on All	5	22%	6	17%	7	20%
Mistrial/Hung Jury	0		1	3%	3	9%
<i>Guilty on All Charges</i>	14	61%	15	42%	15	43%
<i>Guilty on One or More Charges</i>	4	17%	14	39%	10	29%
Total Guilty	18	78%	29	81%	25	71%
Total Clients at Trial	23		36		35	

Table 18 shows outcomes for those clients who received a finding of guilt. HCPD clients were more likely (38 percent) to be sentenced to jail than clients with appointed (29 percent) or retained counsel (32 percent), but were the least likely to be sentenced to prison (32 percent) versus appointed counsel clients (36 percent) and retained counsel clients (39 percent). This filtering effect may partially explain why their average prison sentences were higher. Probation, county jail, and state jail sentence lengths are nearly indistinguishable across counsel type.

Table 18: Client Outcome Comparison for Felony Clients Found Guilty

	Public Defender			Appointed Attorney			Retained Counsel		
	Num	Per	Length	Num	Per	Length	Num	Per	Length
Fine Only	1	.1%		2	.1%		14	2%	
Probation	18	3%	3.8 Yr	10	1%	4.9 Yr	79	11%	3.8 Yr
County Jail	328	39%	.4 Yr	320	29%	.6 Yr	235	32%	.5 Yr
State Jail	199	25%	.6 Yr	369	33%	.6 Yr	124	17%	.8 Yr
TDCJ	221	33%	6.5 Yr	401	36%	4.8 Yr	284	39%	5.6 Yr
Total Guilty	877⁸⁰			1,102			736		

Table 19 shows the proportion of clients with reductions in charges. Clients, regardless of attorney, had charges reduced in one or more cases about a third of the time. Appointed counsel reduced charges for 23 percent of clients, which is more than HCPD and hired attorneys. As noted in Table 11, appointed counsel also achieved the fewest dismissals (11 percent versus HCPD's 17 percent and retained counsel's 18 percent). This suggests that HCPD and retained counsel are more likely to achieve dismissal of weak cases, where appointed counsel is more likely to plead them down.

Table 19: Reductions for Findings of Guilt and Percentage of Total Cases by Attorney Type

	Public Defender	Appointed Attorney	Retained Counsel
Clients Guilty of One or More Charges with Reductions	275	347	244
Total Clients Guilty	881	1,102	736
Proportion of Guilty with Reductions in Charge	31%	32%	33%
Total Clients Represented	1,431	1,539	1,632
Proportion of Total Clients with a Reduction for Guilty Cases	19%	23%	15%

Table 20 shows the combination of clients with all cases dismissed and a reduction in charges. Treating a dismissal as the ultimate reduction in charges (reduced to no charge), than HCPD actually achieved the highest client charge reduction rate, but the rates are close across attorney type.

Table 20: Combining Reductions and Dismissals, by Attorney Type

	Public Defender	Appointed Attorney	Retained Counsel
Proportion of Total Clients with a Reduction for Guilty Cases	19%	23%	15%
Proportion of Total Clients with Dismissed Cases	17%	11%	18%
Total Clients	36%	34%	33%

Finally, the Justice Center again conducted interviews with district judges hearing criminal cases. As was the case with the misdemeanor judges, the overall impression of HCPD attorneys was quite positive. Several judges indicated that they try to use HCPD in cases that will particularly benefit from the resources, such as investigation, that HCPD can bring to bear. Two judges expressed a concern about the caseload limit imposed by HCPD, suggesting: (1) that assigned counsel seems to do “alright” with many more cases than the limit imposes; and (2) it seems unfair to all the other courtroom staff for the public defenders alone to enjoy such a limit on their workload. One judge, a rare user of the office, expressed the opinion that the management level attorneys in HCPD were high quality, but some of the line-level attorneys were less impressive.

E. Appellate Division

For the Appellate Division, the Justice Center also included a qualitative component to the evaluation, interviewing the director and six assistants in the District Attorney’s Office, Appellate Division. Overall, the commentary was positive, but there were criticisms as well. Prosecutors reported that HCPD lawyers are good writers, with briefs more clearly written than those by contract counsel, which makes the opposing lawyer’s job (as well as the appellate court’s job) easier and more efficient. They reported that HCPD lawyers keep up with trends in the law, which is possible because of a centralization of resources, also making it easier to communicate and exchange information. The interviews did reveal the perception that the Appellate Division of HCPD has “a problem with lateness” and a “blatant disregard for filing extensions.” The Texas Rules of Appellate Procedure allow for motions to extend if they include the deadline for filing the item in question, the length of the extension sought, the facts relied on to reasonably explain the need for an extension, and the number of previous extensions granted regarding the item in question.⁸¹

Table 21 shows the number of extensions requested and average extensions requested, by attorney type, for the same period. In those cases with any extension filed, the average number of extensions filed by appointed and retained counsel is comparable with HCPD. When the prosecution filed extensions, almost double the extensions were filed. Although this suggests the prosecution files the most extensions, comparing the proportion of cases in which extensions were filed suggests otherwise. Appointed and retained counsel filed extensions in 45 and 47 percent of their respective cases. The prosecution filed extensions at a slightly lower, though still comparable, proportion of 44 percent. HCPD filed extensions in 67 percent of cases.

Table 21: Extensions Filed in Appeals by Attorney Type, Feb. 2011 - Aug. 2012

	Appointed	Retained	Prosecution⁸²	HCPD
Maximum Extensions Filed in a Case	12	8	28	10
Total Cases with Extensions Filed	433	169	795	203
Total Cases with Deadlines	958	361	1,816	303
Percentage of Cases with Extensions	45%	47%	44%	67%
Average Extensions Filed per Case if Extension Filed	2.9	3.0	5.7	3.3

In terms of case outcomes for the Appellate Division, the first layer of analysis is motions for new trial. In many instances, cases that would otherwise go through the appellate process may be resolved more quickly through a motion for new trial. In cases where the client does not prevail on the motion, the appeal that follows stands a better chance of success, because the appellate record contains important testimony and documents from the motion for new trial, which otherwise would not be part of the record. HCPD provided to the Justice Center five examples of successful motions for new trial.⁸³

For full-blown (“direct”) appeals, the Appellate Division had a 5-percent reversal rate, calculated as the ratio of number of cases reversed to number of cases heard. The 1st and 14th Courts of Appeals, in which the Appellate Division practices, average a three per cent reversal rate in criminal cases. HCPD provided to the Justice Center eight reported decisions, a subset of all “wins.”⁸⁴

Another measure of the success of the Appellate Division is the number of cases pending at the Court of Criminal Appeals in Austin. As the term “discretionary” suggests, the Court only grants petitions for discretionary review in cases that involve novel or important issues. As of August 2, 2013, there were a total of 67 petitions for discretionary review pending at the Court of Criminal Appeals. The Appellate Division of HCPD represents the appellant in 9 of these cases, or 13.4 percent of all the cases pending at the Court of Criminal Appeals on discretionary review. By contrast, the state’s two other larger public defender’s offices (Dallas and El Paso) have only one case currently pending on discretionary review.⁸⁵

F. Juvenile Division

The Juvenile Division of HCPD started taking cases in December 2011. The Justice Center analysis focuses on the 2012 calendar year of cases, meaning a case had to be assigned and resolved between January 1, 2012 and December 31, 2012. As noted, it was not possible to obtain a matched comparison of cases to measure outcomes across attorney type in the juvenile context.

Table 22 shows the case outcomes for the 500 juvenile cases assigned to HCPD. About a fifth of the cases resulted in non-suit (21 percent), which effectively means the case was dismissed (civil nomenclature is used for juvenile cases). Another 26 percent of the cases resulted in deferred prosecution in which the juvenile is not found delinquent but is placed on a short probation supervision term. A simple majority of cases were disposed as delinquent conduct (53 percent).

Table 22: Case Outcomes for Juvenile Division, Jan. - Dec. 2012

	Number of Cases	Percent of Cases
Non-Suit	104	21%
Deferred Prosecution	129	26%
True (Engaged in Delinquent Conduct)	265	53%
Not True (Did Not Engage in Delinquent Conduct)	0	0%
Waiver of Jurisdiction	2	0.4%
Total	500	100%

Table 23 shows client outcomes for the same period, covering the same cases. As stated above, this measure looks at the most severe disposition if the juvenile has multiple cases. The juveniles were charged with an average of 1.4 offenses each. While Table 22 shows that 21 percent of cases were non-suited, Table 23 shows that only 17 percent of the clients had their cases non-suited. Another 32 percent of the clients received deferred prosecution compared to 26 percent of cases and 51 percent of clients were found delinquent compared to 53 percent of the cases.

Table 23: Client Outcomes for Juvenile Division, Jan. - Dec. 2012

	Number of Clients	Percent of Clients
Non-Suit All Charges	57	17%
Deferred Prosecution	110	32%
<i>True on All Charges</i>	156	45%
<i>True on One or More Charges</i>	21	6%
Total True (Engaged in Delinquent Conduct)	177	51%
Not True (Did Not Engage in Delinquent Conduct)	0	0%
Waiver of Jurisdiction	2	1%
Total Clients	346	100%

Table 24 shows disposition outcomes for clients found to have engaged in delinquent conduct on one or more of their charges. This is the terminology in the juvenile courts that is equivalent to “guilty” in the adult courts. One percent moved to adult criminal district court to resolve their cases (waive jurisdiction); one percent received a determinate sentence beginning in a Texas Juvenile Justice Department (TJJD) facility and moving to an adult facility under Texas Department of Criminal Justice (TDCJ); and two percent received no disposition. One percent of HCPD’s clients received indeterminate sentences to TJJD. HCPD’s clients obtained probation sentences 96 percent of the time. Texas Juvenile Probation Commission reported 96 percent of 4,088 of juveniles disposed in Harris County during calendar year 2010 received a probation term, which is the same distribution as HCPD.⁸⁶

Table 24: Juvenile Division Client Dispositions

Public Defender			
	Number of Clients	Percent of Clients	Length
No Disposition	3	2%	
Probation	170	96%	13 Months
TJJD	2	1%	Indeterminate
TJJD then TDCJ	2	1%	48 Months
Total	177		

G. System Contributions

Positive criminal defense and criminal justice system contributions that suggest the committed and sustained professional presence of the defense function. (Justice Center)

The TIDC grant that created HCPD sought a commitment to an office that would be dedicated to raising the level of practice of criminal defense, and to improvements in the justice system more generally. HCPD has satisfied that expectation.

In perhaps the best example, HCPD applied for and received a \$350,000 grant from the Department of Justice's Bureau of Justice Assistance to develop and staff a comprehensive training program for 10 newly appointed assigned attorneys in the county. Denoted the FACT (Future Assigned Counsel Training) Program, participants have the following requirements.

- Attend an orientation session (which was held on June 21, 2013).
- Attend six trainings conducted by the Gideon's Promise Training Center over the next three years.
- Attend a two-day training in Houston on the Harris County courts and criminal justice system, Texas Criminal Law, the ABA Ten Principles, and the State Bar of Texas' "Performance Guidelines for Non-Capital Criminal Defense Representation."
- Complete the terms of the mentorship curriculum between September 2013 and August 2014, which include 75 hours of mentorship.
- Attend continuing legal education and FACT mentorship meetings which will be provided on a regular basis.
- Provide information on closed cases on an ongoing basis.
- Participate in a performance review after the first six months and at the end of the one-year program.
- Submit a Certificate of Completion and Exit Survey.

The FACT program includes matching each new lawyer in the program with a mentor, whose most important role is to serve as trusted guide and advisor; otherwise the lack of exposure to the basics of local practice and the dynamics of a courtroom can create severe disadvantages for the inexperienced lawyer and his or her clients. The goal of the FACT mentoring program is to teach the local customs and unwritten rules, as well as the official rules of procedure and evidence. The program also includes administration of a 60-question test, with 30 True/False, 25 Multiple Choice, and 5 Short-Answer questions, designed to gauge the participant's knowledge of criminal practice in Texas.

An HCPD Appellate Division attorney is in charge of the second-chair program for the Harris County Criminal Lawyers Association, in which newer criminal defense attorneys are paired with veteran attorneys who mentor them and allow the younger attorneys to gain valuable practical experience. This attorney also conducts monthly "brainstorming sessions" through HCCLA, where lawyers are invited to meet to talk about issues they have in pending cases, and to gain advice and insight from their colleagues in HCCLA. The attorney is also in charge of HCPD's internship program, in which law students from throughout the country spend a semester or more working with HCPD attorneys, gaining valuable practical experience.

The Appellate Division also plays an outsized role in delivering system contributions, such as in those situations when there is a systemic breakdown in the criminal justice system. In the past, where systemic problems were unearthed (such as with drug lab scandals, police misconduct that affected large groups of cases, etc.), courts had no option but to appoint individual private attorneys to each case. Each attorney was required to familiarize himself with what was often an arcane and extensive issue. Often the attorney had no expertise at all in the procedural steps necessary to deal with the problem. Of course, each attorney had to be paid for each case. The public defender can act as a more effective, and efficient, advocate for persons whose cases are affected by these large-scale problems. For example, the Appellate Division represents approximately 75 individuals whose drug convictions have been compromised by the alleged misconduct of a DPS forensic scientist, whose entire multi-county caseload of 5,000 cases is now under review; the division has also been a resource for lawyers and the judiciary in affected counties who are trying to grapple with the problem. The Court of Criminal Appeals has ordered briefing in one of the HCPD cases, which will determine the fate of all of the cases that were allegedly mishandled by the scientist.

The same approach has been undertaken with a new systemic problem that has been discovered concerning alleged misconduct by a property room supervisor at the Nassau Bay Police Department. The district attorney's office notified all potentially affected individuals, and referred them to HCPD Appellate Division, which is investigating the problem, contacting individuals affected, and drafting post-conviction writ applications to obtain remedies for those whose convictions may have been compromised by the misconduct. In addition, HCPD has committed the Appellate Division to focus on reviewing 250 to 400 cases for potential writs based on possible error by a forensic lab technician.

HCPD has presented a total of 63 accredited Continuing Legal Education (CLE) programs since its inception: 7 programs in 2011; 39 programs in 2013, and 17 programs so far in 2013. Total documented attendance at the programs was 1,868 attorneys, at no cost to attendees. The programs have included regular one-hour lunchtime appellate case law updates; an annual 10-hour indigent defense program for attorneys who are applying to be added to the Harris County felony appointments list; a two-hour trial techniques course that averages 80-90 attorneys in attendance per course; and a 4-hour immigration law course that was mandatory for all Harris County misdemeanor court-appointed counsel and was offered four times.

The Appellate Division has provided 34 of the 63 CLE events that HCPD has sponsored since inception.⁸⁷ These sessions may explain a prosecutor's comment, when interviewed, that his/her counterparts in HCPD keep up with trends in the law, which is possible because of a centralization of resources. This kind of activity by the Appellate Division is just what one would hope to see from the institutional presence of a public defender office, and is key to their ambition to raise the level of criminal practice in the county.

The Appellate Division also provides research assistance to the private bar and to the judiciary. One of the division's attorneys is on call each day if a member of the local defense bar needs assistance on a legal issue, and the division regularly responds to questions from Harris County judges regarding legal issues. HCPD specifically offers immigration law advice to private practitioners, with a webpage that offers the opportunity to speak with a staff immigration attorney about immigration consequences implicated in their cases.⁸⁸

HCPD attorneys have reached out by publishing articles and speaking at CLE programs sponsored by other organizations. HCPD personnel have published 5 articles since the office opened in 2011; have served as CLE course directors 9 times; and have been CLE speakers more than 60 times. Attorneys also speak about criminal justice issues at schools, civic groups, and on television, though exact figures are not available for these activities.

Finally, HCPD's former Systems Administrator spent six years working for the Harris County Office of Court Management supporting court-related technology. During his tenure with HCPD, he assisted defense members with viewing digital evidence and facilitated a courtroom practice session for a firm preparing for a high-profile trial. These experiences and knowledge led to the creation of the CLE course, *Mastering Courtroom Technology*, for the defense community. The course includes documentation detailing technical procedures in court and support contacts.⁸⁹

VI. CONCLUSION

The Justice Center conducted this evaluation in order to provide HCPD with timely external validation of the start-up and operations of the office, constructive steps to further enhance their operations, and data to inform further discussions within Harris County. Key findings and lessons learned are summarized here, and described in further detail in the Executive Summary.

Key Findings

- HCPD delivers better defense outcomes than assigned counsel for the cases studied in this evaluation
- HCPD satisfies the ABA Ten Principles
- HCPD provides systemic value-added services
- Assigned counsel system allows high caseloads

Lessons Learned

- Workload control is key
- Quality representation matters
- High volume cannot trump quality defense
- Evaluation of assigned counsel is needed
- Public defenders can provide effective specialization

Pursuing a public defender office was an appropriate decision for Harris County and the Texas Indigent Defense Commission. The Justice Center evaluation leads to the following recommendations for HCPD:

- Continue to adjust the role of the office within the system, ensuring that the county receives the maximum benefit from the specialized defense presence HCPD provides.
- Conduct periodic caseload analysis and evaluate each division's caseload to determine if can be expanded.
- Develop 100-point workloads as the operative definition in agency policy.
- Improve efforts to quantify time spent on cases, with even greater attention to consistent and full reporting.
- After achieving more complete time records, recalculate the present analysis with full records.

Harris County should continue to support HCPD's controlled caseload, while working with HCPD to monitor actual workload. There should also be a sustained effort to evaluate the performance and workload of assigned counsel, as this evaluation shows that dominant model to be the weaker part of the system, from a defense outcome perspective.

ENDNOTES

¹ Lefstein, Norman. *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, page 83, footnote 93. Chicago: American Bar Association, 2012.

² The North Carolina Office of Indigent Defense Services – Systems Evaluation Project (NCSEP) has developed a detailed and elegant performance evaluation framework, with 26 key measures that fit within 11 objectives, which in turn fit within 4 overarching goals. See http://www.ncids.org/Systems%20Evaluation%20Project/Projects/PM_Guide.pdf, last visited July 5, 2013. The NCSEP is also working with four pilot project sites to operationalize the use of performance indicators. The sites are: North Carolina Office of Indigent Defense Services, Connecticut Division of Public Defender Services, Knox County Public Defender's Community Law Office (TN), and Travis County Court Administration (TX). Each pilot site will evaluate their indigent defense system in three key areas: case outcomes, access to counsel, and a selection of the pretrial release indicators listed in the NCSEP Performance Measures Guide. See <http://www.ncids.org/Systems%20Evaluation%20Project/Projects/PilotSite.pdf>, last visited July 5, 2013.

³ See studies cited in footnotes 67-70.

⁴ "Corrections – Report of the National Advisory Commission on Criminal Justice Standards and Goals, 1973," *U.S. Department of Justice*, 1973.

⁵ See §§XIV-XXII of the HCPD Personnel Manual, which bears a strong, but tailored resemblance to the State Bar guidelines, available at <http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/PerformanceGuidelinesforNon-CapitalCriminalDefenseRepresentationJanuary2011.pdf>.

⁶ Texas Legislature. 83rd Session, *HR 1318*, "Relating to the appointment of counsel to represent certain youths and indigent defendants," by Representative Sylvester Turner. See <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=83R&Bill=HB1318>

⁷ Texas Indigent Defense Commission, "Combined Statewide Indigent Defense Expenditure Report," Fiscal Year 2012, accessed September 26, 2013, <http://tidc.tamu.edu/public.net/Reports/StateFinancialReport.aspx?fy=2012>.

⁸ The Sixth Amendment to the U.S. Constitution provides that "In all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defense." Until the 1960s, case law acknowledged the right to counsel in state courts only in capital cases. *Powell v. Alabama*, 287 U.S. 45 (1932). Starting in 1963, case law sometimes referred to as "*Gideon* and its progeny" expanded the right to counsel for indigents to include state felony cases, *Gideon v. Wainwright*, 372 U.S. 335 (1963), misdemeanors, *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and juvenile delinquency cases, *In Re Gault*, 387 U.S. 1 (1967). For a full sketch of the development of the right to counsel through case law, see Chapter 1 of *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, (The Constitution Project 2009).

⁹ *Strickland v. Washington*, 466 U.S. 668 (1984).

¹⁰ Texas Disciplinary Rules of Professional Conduct, 1989, reprinted in Tex. Govt Code Ann., tit. 2, subtit. G, app. (Vernon Supp. 1995)(State Bar Rules art X. Available at: <http://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct.aspx>

¹¹ *Ibid.* Preamble.

¹² ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441 (2006).

¹³ Lefstein, Norman. *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*. Chicago: American Bar Association, 2012. And Lefstein, Norman. "Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel," National Right to Counsel Committee, The Constitution Project, 2009.

¹⁴ Lefstein, Norman. *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*. Chicago: American Bar Association, 2012.

¹⁵ *Ibid.* pp 192-194.

¹⁶ American Bar Association. "Ten Principles of a Public Defense Delivery System," February 2002, accessed September 26, 2013 http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet_authcheckdam.pdf.

¹⁷ American Bar Association, "Standards for Providing Defense Services," 1990, accessed September 26, 2013 http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_toc.html.

¹⁸ "Standards and Evaluation Design for Appellate Defender Offices" (1989); "Administration of Assigned Counsel Systems"

(1984); “Guidelines for Negotiating and Awarding Contract Counsel Systems” (1985); “Performance Guidelines for Criminal Defense Representation” (1995). Also see “Guidelines for Legal Defense Systems in the United States,” promulgated by the National Study Commission on Defense Services. See http://www.nlada.org/Defender/Defender_Standards/Defender_Standards_Home.

¹⁹ Fabelo, Dr. Tony, “What Policymakers Need to Know to Improve Public Defense Systems,” *Executive Session on Public Defense*, Harvard University, 2001.

²⁰ Wikipedia, “List of counties by U.S. state,” accessed September 26, 2013, http://en.wikipedia.org/wiki/List_of_counties_by_U.S._state.

²¹ Office of Court Administration, “Courts Structure of Texas,” September 1, 2013, www.txcourts.gov accessed September 26, 2013.

²² Office of Court Administration, *District Courts*, <http://www.txcourts.gov/courts/district.asp>.

²³ The Supreme Court of Texas addressed a similar problem on the civil side of the docket in 1994, in the context of court appointments of guardians ad litem to protect the interests of minors, by requiring reporting to the court of appointment fees of \$500 or more. The disclosure regimen was apparently prompted by a 1991 article in *Texas Lawyer* that described how an inexperienced lawyer in Houston earned nearly \$100,000 from appointments by a single judge. (See “Making \$93,650 the Easy Way: Connections with Judge Enrich Houston Ad Litem,” Robert Elder Jr. and Mark Ballard, *Texas Lawyer*, March 4, 1991; Supreme Court Order No. 94-9014, not available online.) The reporting system continues and has been automated so that one can see, for example, that Harris County courts paid about 31 percent of all fees reported statewide in state FY 2011, about \$16.6 million of \$53.8 million. (Appointments and Fees Report, Texas Courts Online, available at http://www.txcourts.gov/oca/apptfees_reports.asp)

²⁴ Texas Appleseed, “The Fair Defense Report – Analysis of Indigent Defense Practices in Texas,” 2000, available at: http://www.texasappleseed.net/pdf/projects_fairDefense_fairref.pdf, accessed September 26, 2013.

²⁵ Texas Legislature. 76th Session, SB 247, “Relating to defense and pretrial information gathering standards for indigent people who are accused of crime,” by Senator Rodney Ellis, <http://www.lrl.state.tx.us/legis/BillSearch/BillDetails.cfm?legSession=76-0&billtypeDetail=SB&billNumberDetail=247&billSuffix=&startRow=1&IDlist=&unClicklist=&number=100>, accessed September 26, 2013.

²⁶ Texas Legislature. 82nd Session, HB 1754, “Relating to the reorganization of powers and duties among agencies in this state that provide representation to indigent defendants in criminal cases and to the reorganization of funding sources for indigent defense,” by Representative Pete Gallego, <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=HB1754>, accessed September 26, 2013 (see Chapter 79, Texas Government Code).

²⁷ Texas Criminal Justice Coalition, “Texas Indigent Defense Commission: Helping Counties Implement What Works for System-Wide Cost Savings,” Texas Criminal Justice Coalition, 2013, <http://www.courts.state.tx.us/tidc/pdf/TCJCfeatureonTIDCHelpingCountiesJan2013.pdf>, accessed September 26, 2013.

²⁸ Taskforce on Indigent Defense, “Evidence for the Feasibility of Public Defender Offices in Texas,” TFID, 2006, http://www.courts.state.tx.us/tidc/pdf/PD%20Feasibility_Final.pdf, accessed September 26, 2013.

²⁹ Texas Criminal Justice Coalition, “Texas Indigent Defense Commission: Helping Counties Implement What Works for System-Wide Cost Savings,” Texas Criminal Justice Coalition, 2013, <http://www.courts.state.tx.us/tidc/pdf/TCJCfeatureonTIDCHelpingCountiesJan2013.pdf>, accessed September 26, 2013.

³⁰ Capital Public Defender, *Capital Public Defender*, <http://rpdo.org/index.php>, accessed September 26, 2013.

³¹ Texas Indigent Defense Commission, “Blueprint for Creating a Public Defender Office in Texas,” *Texas Indigent Defense Commission*, February 2008, <http://www.courts.state.tx.us/tidc/pdf/2008revisedblueprintfinal.pdf>, accessed September 26, 2013.

³² U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits, Consolidated Federal Funds Report. <http://quickfacts.census.gov/qfd/states/48000.html>.

³³ TDCJ, “Statistical Report, FY 2012,” http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf, accessed August 16, 2013. And Office of Court Administration, “District Courts: Sentenced Imposed September 2011 to August 2012” and “County Level Courts: Misdemeanor Activity Detail, September 2011 to August 2012, Harris County and Statewide,” accessed August 16, 2013.

³⁴ Texas Criminal Justice Policy Council, “Appendix F: Offenders with No Prior Felony Convictions by Number and Percentage Sentenced to Prison: Offense Categories by County,” in “Sentencing Dynamics Study,” 1993, http://www.lbb.state.tx.us/PubSafety/CrimJustice/6_Links/Sentencing_Dynamics_Study_0193.pdf, accessed September 26, 2013.

³⁵ “Harris County Criminal Justice Improvement Project – Preliminary Report,” Memorandum from Justice Management Institute to

Harris County Commissioners Court, June 17, 2009.

³⁶ Texas Indigent Defense Commission “Harris County Data Sheet, 2012,” <http://tidc.tamu.edu/public.net/>, accessed August 12, 2013.

³⁷ Texas Indigent Defense Commission “Harris County Data Sheet, 2012,” <http://tidc.tamu.edu/public.net/>, accessed August 12, 2013. And Office of Court Administration, “Harris County Felony Datasheet, FY 2012,” accessed August 12, 2013.

³⁸ Texas Indigent Defense Commission “Harris County Data Sheet, 2012,” <http://tidc.tamu.edu/public.net/>, accessed August 12, 2013.

³⁹ Shackelford, Wesley, “Review of Tarrant County Indigent Defense System,” TFID, 2006, <http://www.courts.state.tx.us/tidc/pdf/Tarrant%20County%20Report.pdf>, accessed July 10, 2013.

⁴⁰ “Corrections – Report of the National Advisory Commission on Criminal Justice Standards and Goals, 1973,” *U.S. Department of Justice*, 1973.

⁴¹ This was actually the top 10.3 percent of recipient attorneys.

⁴² “Review of Harris County’s Indigent Defense System for Juveniles,” April 25, 2012, Texas Indigent Defense Commission, pp. 15-16. (Unpublished).

⁴³ See “Judge Sure Keeps This Lawyer Busy,” by Rick Casey, *Houston Chronicle*, Oct. 16, 2007; “County Hires Bad Lawyers, Bans Good,” by Rick Casey, *Houston Chronicle*, Oct. 19, 2007

⁴⁴ See “A Public Defender Needs No Cronies,” by Patricia Kilday Hart, *Houston Chronicle*, April 30, 2012; “It’s Hard to Keep Up with the Busy Foe of the Public Defender’s Office,” by Patricia Kilday Hart, *Houston Chronicle*, April 27, 2012; “Experts: Harris County Taking Risks with Lawyer Appointment System,” KHOU-TV, May 19, 2009. Online at: <http://www.khou.com/news/local/66161012.html>; Adam Liptak, “A Lawyer Known Best for Losing Capital Cases,” *New York Times*, May 17, 2010. Online at: <http://www.nytimes.com/2010/05/18/us/18bar.html>; Sarah Viren, “A Select Few Get the Cases, and the Cash,” *Houston Chronicle*, April 20, 2008. Online at: <http://www.chron.com/news/houston-texas/article/Lawyers-picked-for-juveniles-give-campaigns-cash-1759443.php>.

⁴⁵ TIDC Policies and Standards Committee Notebook, June 27, 2013, p. 18: “There is in reality no ‘wheel’ being used in my opinion. There are many attorneys, myself included, who are on the qualified appointment list who receive few appointments even though we are signed up as eligible and requesting appointments for every day of the week. On the other hand there is another group of attorneys who are called multiple times in a week or month, some receiving hundreds of appointments a year. There is one attorney who had approximately 450 appointments last year and earned \$300,000 in court appointed counsel fees.... According to my understanding of the Fair Defense Act, this system is a far cry from what the Act sought to achieve. It is a system seriously out of balance and is unfair.”

⁴⁶ Summary is based upon two sets of presentation notes, dated March 2010 and October 2010, provided by Harris County Office of Criminal Justice Coordination director, Caprice Cospier, in an email to Carl Reynolds dated October 4, 2012.

⁴⁷ Harris County Commissioner’s Court Order, Recorded vol. 271, November 9, 2010, 277.

⁴⁸ Jennings, Floyd. “Data pool.” Email to Jessica Tyler, September 9, 2013. In the past 12 months, there have been a total of 10,413 defendants having a special needs sheet. Of that number 1,401 were appointed to the PDO. The criteria for a special needs sheet is somewhat broader than our algorithm distillate, and includes: (a) a diagnosis of schizophrenia, bipolar disorder, or major depression, or, (b) having been prescribed psychoactive medications in the current period of incarceration, or in a past episode; or (c) having been adjudicated incompetent in the past, or (d) being a ward of the county, i.e. adjudicated incapacitated, or (e) housed on the mental health unit within the jail.

⁴⁹ Texas Indigent Defense Commission “Harris County Data Sheet, 2012,” <http://tidc.tamu.edu/public.net/>, accessed August 12, 2013.

⁵⁰ “Harris County District Court Indigent Defense Plan” and “County Court Indigent Defense Plan,” <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx?cid=101>, accessed September 27, 2013.

⁵¹ Contract counsel arrangements are used by a few courts in Harris County, comprising almost 9 percent of the cases handled by assigned counsel and contract counsel combined.

⁵² See “Harris County Public Defender: Preliminary Report on Operations and Outcomes,” CSG Justice Center (2012), pp. 25-28; available at: <http://www.courts.state.tx.us/tidc/pdf/HCPDOPrelimReport101912.pdf>.

⁵³ Jennings, Floyd. “Data pool.” Email to Jessica Tyler, September 9, 2013. “The criteria for a special needs sheet is somewhat broader than the HCPD algorithm distillate, and includes: (a) a diagnosis of schizophrenia, bipolar disorder, or major depression, or, (b) having been prescribed psychoactive medications in the current period of incarceration, or in a past episode; or (c) having been

adjudicated incompetent in the past, or (d) being a ward of the county, i.e. adjudicated incapacitated, or (e) housed on the mental health unit within the jail.”

⁵⁴ Cohen, Thomas H., Who’s Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes (2011). <http://ssrn.com/abstract=1876474> or <http://dx.doi.org/10.2139/ssrn.1876474>, accessed July 10, 2013.

⁵⁵ “Harris County Criminal Justice Improvement Project – Preliminary Report,” Memorandum from Justice Management Institute to Harris County Commissioners Court, June 17, 2009

⁵⁶ National Study Commission on Defense Services “Guidelines for Legal Defense Systems in the United States,” National Study Commission on Defense Services, 1976, http://www.nlada.org/Defender/Defender_Standards/Guidelines_For_Legal_Defense_Systems, accessed September 26, 2013.

⁵⁷ Capital Murder (which were not assigned to HCPD); Murder; Other Homicides; Aggravated Assault; Sexual Assault of an Adult; Sexual Assault of a Child; Family Violence Assault; Aggravated Robbery or Robbery; Burglary; Theft; Automobile Theft; Drug Sale or Manufacture; Drug Possession; Felony Driving While Intoxicated (DWI); and Other Felonies (a catchall for felony offenses not clearly identifiable as belonging in one of the preceding categories). See Office of Court Administration. District Courts: Explanation of Case Categories. <http://www.txcourts.gov/pubs/AR2012/dc/1-ExplanationOfCaseCategories.pdf>, accessed August 30, 2013.

⁵⁸ Harris County District Clerk. “Harris County Holidays.” http://www.hcdistrictclerk.com/Common/HR/hc_holiday.aspx, accessed August 29, 2013.

⁵⁹ Hours available vary by jurisdiction and additional responsibilities. The Missouri State Auditor reported between 1,363 to 1,635 hours per attorney per year and took 1,536 as the average. Schweich, Thomas. October 2012, p. 15. “Findings in the audit of the Missouri State Public Defender.” Accessed 23 September 2013. <http://auditor.mo.gov/Press/2012-129.pdf> An NCSC study of the Maryland Public Defender estimated 1,378 hours per year (recorded as 82,680 minutes annually). Ostrom, Brian J. 2005. “Maryland Attorney and Staff Workload Assessment, 2005.” National Center for State Courts. <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=414>.

⁶⁰ The Chief Defender’s salary is reported in the Texas Tribune as \$160,518, which includes a car allowance. Government Employee Salaries, *Texas Tribune*, <http://www.texastribune.org/library/data/government-employee-salaries/harris-county/departments/>, accessed September 10, 2012.

⁶¹ Unpublished table obtained from the Texas Indigent Defense Commission.

⁶² Government Employee Salaries, *Texas Tribune*, <http://www.texastribune.org/library/data/government-employee-salaries/harris-county/departments/>, accessed September 10, 2012.

⁶³ Texas Indigent Defense Commission, “Review of Harris County’s Indigent Defense System for Juveniles,” April 25, 2012, Texas Indigent Defense Commission (unpublished).

⁶⁴ See §§XIV-XXII of the HCPD, which bears a strong, but tailored resemblance to the State Bar guidelines, available at <http://www.texasbar.com/Content/NavigationMenu/ForLawyers/Committees/PerformanceGuidelinesforNon-CapitalCriminalDefenseRepresentationJanuary2011.pdf>.

⁶⁵ Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Harris, Waller and Washington counties are in the coterminous 1st and 14th Court of Appeals districts. See <http://www.1stcoa.courts.state.tx.us/> and <http://www.14thcoa.courts.state.tx.us/> and Texas Government Code sec. 22.201.

⁶⁶ A stratified random sample divides a population into subgroups on specific elements, this sample had 30 subgroups of the interaction of variables gender (2), race (3), and charge level (5), in which an observation may only be assigned to one group. The model randomly selects observations from each subpopulation to create proportionately matched comparison groups in which the only variation is the type of attorney. The proportionate stratification increases the precision of comparison; variation is more likely to be caused by the attorney type than by race, gender, or offense, which are all variables associated with differences in dispositional outcomes.

⁶⁷ Martinez, Farrah. Email message to Jessica Tyler, August 8, 2013. “RE: juvenile data.”

⁶⁸ Morgan, Jay. Email message to Jessica Tyler. “RE: juvenile data request.”

⁶⁹ Morgan, Jay. Phone call with Jessica Tyler, June 17, 2013.

⁷⁰ Office of Court Administration, Juvenile Council, “Official District Court Monthly Report Instructions,” attachment in Garcia, Angela, email message to Jessica Tyler, July 3, 2013, “RE: question about Juvenile dispositions in Harris County.”

⁷¹ Carmichael, Dottie, “Wichita County Public Defender’s Office: An Evaluation of Case Processing, Client Outcomes, and Cost,”

Public Policy Research Institute at Texas A&M University, 2013, <http://www.courts.state.tx.us/tidc/pdf/WichitaPDStudy101212.pdf>, accessed September 26, 2013.

⁷² “An Evaluation of the Bexar and Hidalgo County Public Defender Offices: Final Report,” TSG 2009, p. 16, <http://www.courts.state.tx.us/tidc/pdf/Bexar%20&%20Hidalgo%20Final%20Report%205-27-09.pdf>, accessed August 11, 2013.

⁷³ Anderson and Heaton, “How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes,” *Rand Corporation Working Paper*, WR-870-NIJ, December 2011, p. 3.

⁷⁴ Cohen, Thomas H., “Who’s Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes,” 2011, <http://ssrn.com/abstract=1876474> or <http://dx.doi.org/10.2139/ssrn.1876474>, accessed September 26, 2013.

⁷⁵ For a more detailed explanation of the Mental Health Division, see “Harris County Public Defender: Preliminary Report on Operations and Outcomes,” CSG Justice Center (2012), pp. 52-69; available at: <http://www.courts.state.tx.us/tidc/pdf/HCPDOPrelimReport101912.pdf>.

⁷⁶ For a more detailed explanation of the comparison group study, see “Harris County Public Defender: Preliminary Report on Operations and Outcomes,” CSG Justice Center (2012), pp. 65-69; available at: <http://www.courts.state.tx.us/tidc/pdf/HCPDOPrelimReport101912.pdf>.

⁷⁷ The balance of three cases between guilty and punishment were convicted in a felony case and sent to a TDC facility. These were not included in the table, because Justice Center did not receive that information for the Pilot or Match samples.

⁷⁸ The arrest history for the pilot study was generated for all 28 clients. The match group had history for 115, with 7 excluded due to lack of state identifying number. The 353 clients with full cases had 31 exclusions due to lack of 365 day exposure period and 3 due to missing identification numbers.

⁷⁹ Because trials are so rare the full disposition file extracted from JIMS was used in lieu of the match sample.

⁸⁰ George, Vicki, email message to Jessica Tyler, “RE: Missing Punishments,” August 21, 2013.

⁸¹ See Texas Rules of Appellate Procedure, Rule 10.5(b), available at: <http://www.supreme.courts.state.tx.us/rules/TRAP/trap-all.htm#sr4>.

⁸² Prosecution includes Attorney General, County Attorney, District Attorney, Special Prosecutor, and State Prosecuting Attorney. There are 4,533 cases and 99 percent have the District Attorney’s office listed as the prosecutor.

⁸³ *State v. Jeremy Thomas*, 177th District Court (grant of motion for new trial on murder/life sentence); *State v. Calvin Fuller*, 184th District Court (grant of motion for new trial on punishment, reversing 14-year sentence); *State v. Christopher Norman*, 228th District Court (grant of motion for new trial where defendant found not to have voluntarily waived counsel at his plea); *State v. James Whitney Brown*, 184th District Court (grant of motion for new trial on 12-year sentence); *State v. Kenneth Jolivet*, County Court No. 5.

⁸⁴ *Vasquez v. State*, 397 S.W.3d 850 (Tex. App.-Houston [14th Dist.] 2013, pet. granted)(capital murder conviction and life sentence reversed due to faulty confession); *Hacker v. State*, 389 S.W.3d 860 (Tex. Crim. App. 2013)(reversal at Court of Criminal Appeals of revocation of probation); *Beasley v. State*, No. 01-11-00143-CR, decided July 26, 2012 (reversal of burglary conviction); *Alford v. State*, 367 S.W.3d 855 (Houston [14th Dist.] 2012, pet. ref’d.)(reversal of drug conviction); *Watts v. State*, 371 S.W.3d 448 (Houston [14th Dist.] 2012, pet. ref’d.)(reversal of weapons case due to improper argument); *Bryant v. State*, No. 01-12-00349-CR, decided July 2, 2013 (reversal of conviction for engaging in organized criminal activity); *Johnson v. State*, 389 S.W.3d 513 (Tex. App.-Houston [14th Dist.] 2013, pet. granted)(court costs challenge upheld, affecting potentially thousands of cases); *State v. Jefferson*, 14-12-00296-CR, decided April 18, 2013 (upheld trial court’s motion to suppress evidence).

⁸⁵ Acosta, Abel, Clerk of the Court of Criminal Appeals, email message to Carl Reynolds, August 2, 2013.

⁸⁶ TJJJD, “The State of Juvenile Probation Activity in Texas, Calendar Years 2009 & 2010,” TJJJD, http://www.tjjd.texas.gov/publications/reports/RPT_STAT_2010.pdf accessed September 2, 2013.

⁸⁷ TIDC performance measures, with input from HCPD.

⁸⁸ HCPD webpage at: <http://harriscountypublicdefender.org/support/immigration/>.

⁸⁹ Giannantonio, Ben, email to Jessica Tyler, “RE: Tech stuff for Report,” September 18, 2012.